

THE UNIVERSITY
OF ILLINOIS
LIBRARY

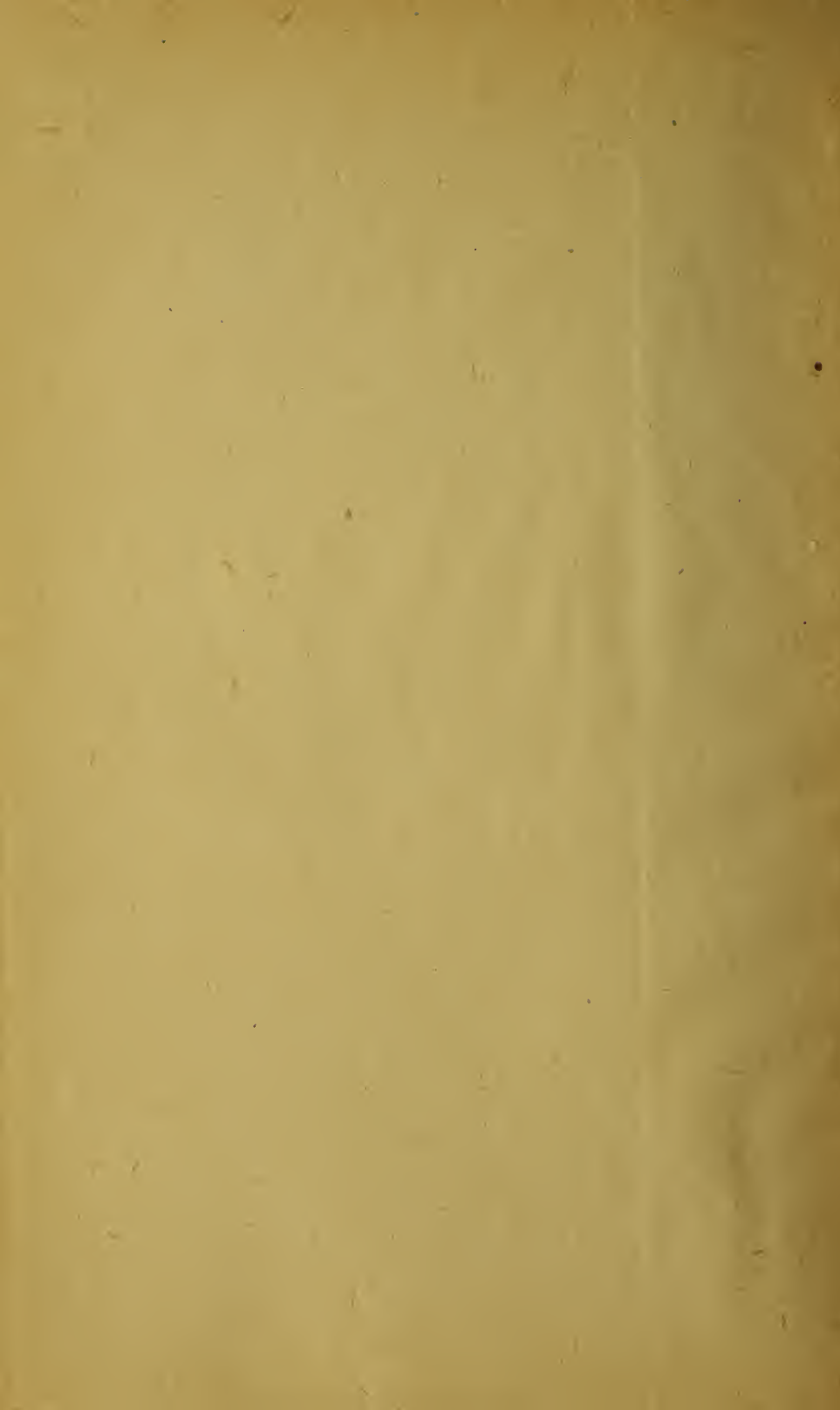
385.731

Un3

v. 5

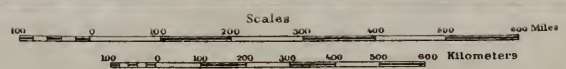
~~5~~



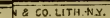




TERRITORIAL GROUPS OF THE UNITED STATES
ADOPTED BY THE
INTERSTATE COMMERCE COMMISSION
STATISTICIAN'S OFFICE
FOR THE
COMPILATION OF RAILWAY STATISTICS



S Mis 31 52 1



LIBRARY
UNIVERSITY OF CALIFORNIA
1891

FIFTH ANNUAL REPORT

OF THE

INTERSTATE COMMERCE COMMISSION.

DECEMBER 1, 1891.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1892.

THE INTERSTATE COMMERCE COMMISSION.

* THOMAS M. COOLEY, of Michigan, *Chairman*.

WILLIAM R. MORRISON, of Illinois.

† AUGUSTUS SCHOONMAKER, of New York.

‡ WALTER L. BRAGG, of Alabama.

WHEELOCK G. VEAZEY, of Vermont.

|| MARTIN A. KNAPP, of New York.

EDWARD A. MOSELEY, *Secretary*.

* Resigned, September 4, 1891.

† Term expired, December 31, 1890.

‡ Died, August 21, 1891.

|| Appointed, March 2, 1891,

385.731
U. 113
v. 5

LIBRARY
UNIVERSITY OF CHICAGO

REPORT

OF THE

INTERSTATE COMMERCE COMMISSION.

OFFICE OF THE INTERSTATE COMMERCE COMMISSION,
Washington, D. C., December 1, 1891.

To the Senate and the House of Representatives:

The Interstate Commerce Commission respectfully submits its fifth annual report of information and data collected and considered of value in the determination of questions connected with the regulation of commerce. Recommendations and suggestions as to additional legislation are made in connection with the subjects to which they relate. The names and compensation of the persons employed by the Commission, with the appropriations and expenditures for the past year, will be found in the appendix (A) to this report.

In the third annual report the Commission presented a summary of its force, its organization into administrative divisions "for the systematic and efficient performance of its duties," enumerating the duties of the several divisions, and showing the distribution of the office work. Results having, in the main, justified this method of organization and distribution, it has been continued with little change. The detail work as set forth in its third annual report has continued with increasing volume since that report was made, but efficiency resulting from experience enabled the office in the last year to deal with a constantly increasing volume of business without augmenting its force.

RAILWAY STATISTICS.

The work of the statistical division enables the Commission to make a complete exhibit of the condition of railways in the United States for the fiscal year ending June 30, 1890, and includes a compilation of monthly returns of railway income and expenditure for the nine months ending March 31, 1891, thus constituting a report of the operation of railways for a period of twenty-one consecutive months.

The statistics are classified into ten districts or territorial groups. The necessity for this classification into groups shown by the map facing the title page of this report arose from the great diversity in the conditions under which railways are operated in various parts of the country. The following table taken from the report shows how various are these conditions:

COMPARATIVE SUMMARY OF ITEMS, BY GROUPS.

Territory covered	Gross earnings per mile of line.	Operating expenses per mile of line.	Locomotives per 100 miles of line.	Men employed per 100 miles of line.	Passenger mileage per mile of line.	Freight mileage per mile of line.
Group I	\$10,444	\$7,075	28	716	233,530	383,505
Group II	15,829	10,275	46	1,167	183,121	1,348,107
Group III	7,785	5,322	24	576	85,572	793,763
Group IV	4,279	2,886	13	379	43,039	330,981
Group V	4,945	3,278	14	386	46,869	304,936
Group VI	5,195	3,324	15	359	50,059	376,403
Group VII	5,128	3,007	12	328	46,148	269,866
Group VIII	4,056	2,613	12	307	37,027	243,753
Group IX	4,331	3,278	11	303	33,561	245,732
Group X	5,836	3,871	13	250	67,196	191,806
United States	6,726	4,425	19	479	75,751	487,245

Territory covered.	Revenue per passenger per mile.	Revenue per ton per mile.	Per cent of passenger earnings to total earnings.	Per cent of freight earnings to total earnings.	Value of railway property per mile of line, computed at 5 per cent on basis of earning capacity.
	<i>Cents.</i>	<i>Cents.</i>			
Group I	1.912	1.373	47.50	51.36	\$57,867
Group II	2.029	.828	27.33	70.28	107,741
Group III	2.199	.695	28.72	69.33	45,941
Group IV	2.481	.844	30.94	66.93	25,177
Group V	2.465	1.061	29.16	67.77	30,206
Group VI	2.226	.961	26.87	70.97	36,406
Group VII	2.452	1.300	27.46	71.19	38,136
Group VIII	2.268	1.152	25.96	69.99	27,168
Group IX	2.583	1.303	23.88	74.42	14,593
Group X	2.308	1.651	34.85	61.74	22,672
United States	2.157	.941	29.41	68.23	42,374

The railway mileage of the United States for the year ending June 30, 1890, was 163,597.05 miles, and the increase in railway mileage brought into operation was 5,838.22. The total length of track, including all tracks, sidings and spurs, was 208,612.55 miles. The largest increase in operated mileage is to be found in Group V; that is to say, in the States of Kentucky, Tennessee, Mississippi, Alabama, Georgia, and Florida. These States show an increase in operated mileage of 1,370.32 miles during the year.

The number of railway corporations on June 30, 1890, was 1,797. Of these 87 are classed as private roads, the total operated mileage of

which is 812 miles, and 48 are roads not in operation. Of the 1,710 corporations doing a public business, 927 are operating companies and 735 are companies whose line is leased to other companies for the purpose of operation. Twenty-two companies, representing a mileage of 1,646.10 miles, have been reorganized during the year; 34, representing a mileage of 1,905.87 miles, have merged their corporate existence into other corporations, and 50 companies, representing a mileage of 6,196.04, have been consolidated with other companies. Thus, 84 companies, representing a total mileage of 8,101.91 miles of line, have disappeared during the year as independent companies.

A classification of railways, according to the gross revenue, shows that 75 companies realize a gross income of \$846,888,000, which is equal to about 80 per cent of the total income received by all the railways of the United States. Classification, according to length of line operated, shows that 40 corporations operated 77,872.63 miles of line, which is equivalent to 47.51 per cent of the total mileage in the United States.

The total number of locomotives in the United States is 29,928, of which 8,384 are passenger locomotives and 16,140 are freight locomotives. This shows 5 passenger locomotives and 10 freight locomotives for each 100 miles of operated line. The number of cars used by the railways of the United States is 1,164,188, of which 26,511 are in the passenger service. The number of cars per 100 miles of line is 744.

The average number of tons of freight carried 1 mile per freight engine is 4,721,626 and the average number of passengers carried 1 mile per passenger engine is 1,413,142. A larger proportion of equipment is to be found in the Middle and New England States than in other parts of the country; thus, in the New England States, Group I, there are 28 locomotives per 100 miles of line; in the Middle States, Group II, 46 locomotives per 100 miles of line, while in the States west of the Mississippi the number does not exceed 15 locomotives per 100 miles of line. The number of locomotives fitted with train brake is 20,162; the number fitted with automatic couplers is 955. The number of cars fitted with train brake is 128,241; the number fitted with automatic couplers is 114,364. The increase in the number of train brakes on locomotives during the year was 2,167, while the increase in the number of automatic couplers on locomotives during the year was 733. When it is noticed that the total increase in the number of locomotives during the year was 892, these figures disclose a satisfactory tendency toward a more general use of safety appliances on locomotives. The increase in the number of train brakes on cars during the year was 18,077, and the increase in the number of automatic couplers on cars was 33,854. The total increase in cars, however, during the same period was 95,633, from which it appears that by far the larger proportion of new cars built were not furnished with the safety appliances in question. These facts are pertinent when taken in connection with the statistics of railway accidents.

The total number of men employed on railways during the year was 749,301, being an increase of 44,558 over the number employed during the year ending June 30, 1889. The average number of men employed per 100 miles of line on all roads in the United States is 479. In New England, Group I, the average number per 100 miles of line is 716; in the Middle States, Group II, the number per 100 miles of line is 1,167; in the States of Virginia, North Carolina, South Carolina, and part of West Virginia, Group IV, it is 379; in various sections of the Western States the number ranges from 250 to 359. These figures indicate a higher density of traffic in the Eastern and Middle States than in other parts of the country.

The number of miles of line forming the basis of these statistics is 156,404.06. This mileage is represented by railway capital to the amount of \$9,437,353,372 or \$60,340, per mile of line. Assuming that the mileage for which no reports pertaining to capital have been received is capitalized at the same rate, the total capitalization of railways in the United States would be \$9,871,378,389. The greatest difference may be observed in the capitalization of railways in various parts of the country. Thus, New England railways are capitalized at \$50,834 per mile of line; the railways in the Middle States at the rate of \$117,902 per mile of line; the railways of the two Southern groups of States, that is, Groups IV and V, at the rate of \$47,434 and \$46,775 per mile of line respectively; the railways lying west of the Missouri and of the Lower Mississippi rivers are capitalized at about \$50,000 per mile of line, with the exception of the States bordering on the Pacific, which are capitalized at \$87,104 per mile of line.

An instructive comparison with the actual capitalization of railways is permitted by the table in the report showing the valuation of railway property computed on the basis of the amount of money which the property has actually earned for its owners during the year ending June 30, 1890. If interest payments, and final net earnings available for dividends be capitalized at 5 per cent, it appears that, regarded as a 5 per cent investment, the value of railway property in the United States, judged from the operations of the year ending June 30, 1890, was \$6,627,461,140, which is equivalent to \$42,374 per mile of line. In the New England States, Group I, the value of railway property, considered as an investment, exceeds its capitalization, it being \$57,867 per mile of line; in the Middle States, Group II, the value of railway property is \$109,741 per mile of line, a sum slightly less than the actual capitalization; in all other parts of the country the valuation of railway property on the basis of actual earnings falls below the actual capitalization. In Group X, for example, where the capitalization is \$87,104 per mile of line, the valuation is but \$22,672 per mile of line.

The total amount of stock issued on railways in the United States is \$4,409,658,485, of which \$2,811,526,552, or 63.76 per cent paid no dividend. In the New England States 24.58 per cent of stock paid no divi-

dend; in the Middle States 47.27 per cent of stock paid no dividend; in Group IX, which comprises Louisiana, the greater part of Texas, and part of New Mexico, 99.99 per cent of stock paid no dividend; and in Group X, which comprises the States bordering on the Pacific Ocean and certain States and Territories adjacent, 83.54 per cent of stock paid no dividend.

The number of passengers carried by the railways of the United States during the year was 492,430,865, the passenger mileage for this period being 11,847,785,617 miles. This shows an average journey of of 24.06 miles per passenger. The passenger train mileage for the same period was 285,575,804, showing the average number of passengers carried in a train to be 41.

The number of tons of freight carried by the railways of the United States for the period covered by the report was 636,541,617; the number of tons carried 1 mile was 76,207,047,298, This shows the average haul per ton to have been 119.72 miles. Freight train mileage for the same period was 435,170,812 miles, showing the average number of tons in train to have been 175.12. The average number of passengers carried 1 mile per mile of line on all railways in the country was 75,751, and the average number of tons of freight carried 1 mile per mile of line was 487,245. These figures are significant as measuring the density of passenger and freight traffic. If the corresponding figures were given for each of the groups into which the country is divided, it would show the greatest diversity in the density of traffic. In the New England States, for example, the average number of passengers carried 1 mile per mile of line was 233,530, and in the Middle States it was 183,121. In Group IX, on the other hand, the average number of passengers carried 1 mile per mile of line was 33,561 and in Group VIII it was 37,027. Nothing could indicate better the difference in the conditions under which railways are operated. In freight traffic the divergence is even more marked. Thus, in the Middle States, Group II, the number of tons of freight carried 1 mile per mile of line was 1,348,107, and in Group III, that is to say, in the States of Ohio, Indiana, and the lower peninsula of Michigan, which stands next to the Middle States in density of freight traffic, the number of tons of freight carried 1 mile per mile of line was 793,763. The corresponding figure for railways on the Pacific Slope is 191,806, and in Group VIII, which comprises chiefly the States of Kansas, Southern Colorado, Southern Missouri, and Arkansas, the number of tons of freight carried 1 mile per mile of line was 243,753.

The average receipts per passenger per mile for all railways in the United States was 2.167 cents; the average cost of carrying 1 passenger 1 mile was 1.917 cents. The average receipts for carrying 1 ton of freight 1 mile was .941 cent; the cost of carrying 1 ton of freight 1 mile was .604 cent. The average revenue per train mile on passenger trains on all railways in the United States, was \$1.08.041; the average cost

per mile of line of running passenger trains was .80.984 cents. The average revenue from a freight train running 1 mile was \$1.65.434; the average cost of running a freight train 1 mile was \$1.05.711. These figures indicate the margin from which railways must secure their profit in the business of transporting passengers and freight.

There is a marked difference in the rate of traffic receipts in the various groups into which the country is divided. The lowest rate per ton per mile is in Group III, that is to say, in the group comprising the States of Ohio, Indiana, and lower peninsula of Michigan, it being .695 cent; the highest rate per ton per mile is found in the railways of the Pacific Slope, it being 1.651 cents. The lowest rate per passenger per mile is found in the New England States, it being 1.912 cents; the highest rate for passengers is found in Group IX, comprising Louisiana, the greater part of Texas, and part of New Mexico, it being 2.583 cents per passenger per mile.

The statistics of accidents show in what portions of the country railway traffic is relatively more dangerous. The total number of persons reported as killed during the year was 6,334, and the total number reported as injured was 29,025. Of the total number reported as killed 2,451 were employés, 286 were passengers, and 3,597 were classed as "other persons." Of the total number reported as injured 22,394 were employés, 2,425 were passengers, and 4,206 were classed as "other persons." Among employés one death occurred for every 306 men employed, and one injury for every 33 men employed. The largest number of casualties occurred to men engaged directly in handling trains; thus, while trainmen represent but 20 per cent of the total number of employés, the casualties sustained by them account for 58 per cent of total casualties. The most common accident to which railway employés are liable arises from coupling and uncoupling cars, the total number of casualties due to this source being 8,211, of which 369 were fatal. The figures further show that one passenger is killed for every 1,727,789 passengers carried, or for every 41,425,823 passenger miles accomplished.

In assigning accidents to territory, the country is divided into three divisions, the first comprising the territory north of the Ohio and Potomac rivers and east of Illinois and Lake Michigan, the second the territory south of the Ohio and the Potomac rivers and east of the Lower Mississippi, and the third comprising the territory west of Lake Michigan, Indiana, and the Lower Mississippi River. A comparison of the liability to accidents in these divisions shows the greatest danger from railway traffic in the second division, and the least danger in the first division named. Thus, in the first division 1 passenger was killed for every 2,519,851 passengers carried, or for every 47,037,067 passenger miles accomplished, while in the second division 1 passenger was killed for every 838,555, or for every 31,021,814 passenger miles accomplished. In the first division 1 employé was killed for every 290 men employed, or 1 trainman for every 107 men employed; while in

the second division 1 employé was killed for every 241 men employed, or 1 trainman for every 65 trainmen employed. Other figures are in about the same proportion as those given. The third division, that is to say, the territory occupied by the western railways, conforms in the main, so far as accidents are concerned, to the second division.

The detailed statistics, of which the foregoing is a synopsis, may be found in the report of the statistician, published in a separate volume. The figures therein given relating to capitalization of railways, and other data, are either those filed in the official reports of railway companies to the Commission, or are deductions based on the information so reported.

In connection with these statistics it is suggested to the Commission :

(1) That corporations and companies furnishing rolling stock to railways should be obliged to submit some report as to their equipments and as to the amount and character of the business done by them; also that corporations and companies owning terminal facilities leased to railways should be required to submit corresponding reports.

(2) That express companies should be required to make reports of traffic operations to the Interstate Commerce Commission. The business which they carry on is in reality a business of quick delivery of freight. The amount of money which they pay annually to the railways exceeds \$20,000,000, and their gross income is believed to exceed \$40,000,000. They should be treated as a branch of the railway service.

(3) That transportation on the Great Lakes and the coasting and river traffic should be brought under the control of the Interstate Commerce Commission, so far at least as statistics are concerned. The traffic on the Great Lakes in 1889, estimated in ton mileage, equaled 22 per cent of the traffic of all the railways in the United States. The coast and river traffic is known to be of immense magnitude. It is impossible to secure complete statistics of transportation without calling upon water carriers for a statement of business done, and it is believed that, in some instances at least, water lines are used to assist railways in evading the requirements of the interstate commerce law.

These suggestions to the Commission are submitted for the consideration of Congress.

GOVERNMENT-AIDED RAILROAD AND TELEGRAPH LINES.

The duties imposed upon the Commission in regard to Government-aided railroad and telegraph lines by the act of Congress of August 7, 1888 (chap. 72, acts of Fifty-first Congress, U. S. Stats. at Large, p. 382), have been performed. The Commission treated this subject at length in its third annual report, and last year reported that blanks had been supplied to the several aided lines, as provided in the act, but that none of the companies had forwarded the information required. Reports for that year have since been filed by the Sioux City and Pa-

cific Railway Company and the Northern Pacific Railroad Company. The Commission sent blank forms for the current year to all the lines required to report, receiving no returns, except from the two companies above named, and these are incomplete and not in compliance with the act. The Attorney-General has been notified of these failures to observe the statute, and the Commission is informed that legal proceedings have been instituted under his direction to compel the railroads in question to fulfill the requirements of the law.

REPARATION FOR DAMAGES.

In a number of complaints made in the past year the Commission has been asked to order reparation for damages alleged to have been sustained. Prior to the amendment of March 2, 1889, no provision was made for enforcing in the courts by judgment and execution any recommendation or order for such reparation which the Commission might make. As the law then stood any order of reparation would have been altogether ineffectual, and the Commission generally declined to consider the question of damages, and confined its recommendations or orders to questions of regulation or matters of an injunctive character, to prevent the continuance of wrong rather than to afford redress for past injuries.

The amendment of March 2, 1889, provided a summary remedy for the recovery of damages in court by the party to whom the Commission might award reparation; yet in most cases presented to the Commission, involving the question of damages, that question seemed so peculiarly suitable for jury trial, it was deemed proper to leave it for determination in the courts. In some of the United States circuit courts it has been recently held that where the Commission has been asked to consider a claim for damages, that question can not be subsequently made the basis of a suit in court, even though the Commission declined to pass upon it. If these decisions correctly interpret the law, a failure or refusal on the part of the Commission to act upon the question of damages leaves the party without redress.

Since the announcement of these decisions the Commission has considered and passed upon the question of reparation whenever the issues and the evidence required it.

SPECIAL SESSIONS AND INQUIRIES.

To keep itself informed as to the manner in which the business of common carriers is conducted, and to promote the public convenience while endeavoring to execute and enforce the act, the Commission has during the year held special sessions, made investigations, and instituted inquiries at Jacksonville, Fla.; Aiken, S. C.; Chicago, Ill.; Milwaukee, Wis.; St. Paul, Minn.; Fargo, N. Dak.; Spokane Falls, Wash.;

Portland, Oregon; San Francisco, Cal.; Denver, Colo.; Topeka, Kans.; Kansas City and St. Louis, Mo.; and Boston, Mass.

The magnitude of the business of railway transportation, the enormous capital invested, and great number of persons employed in it require full information and great familiarity with the varied conditions affecting transportation in widely separated sections of the country. The knowledge necessary to any proper railway regulation can scarcely be acquired without opportunity for local inquiry and investigation in a country of such vast extent and in which the cost and other conditions of transportation are so different and subject to such variety of circumstances in different sections.

It would, it is believed, facilitate and better secure the enforcement of the law to hold such special sessions and local investigations in the various parts of the country more frequently, if other imperative duties imposed on the Commission would permit. Some of the information and advantages of these local examinations might be secured, under the direction of the Commission, by special agents, were their appointment authorized in accordance with the recommendations made in previous annual reports. The administrative duties of the Commission connected with establishing and changing rates and charges, publication and filing of rate sheets, classification of freight, collection and preparation of statistics, adjustment and settlement of controversies by means of correspondence, and the investigation and decision of disputed questions is done at the main office in Washington. The performance of these duties leaves to the Commission scant time for necessary work elsewhere. An abstract of the decisions made during the year and of the more important decisions previously made is given in Appendix B. These decisions, in the form of reports and conclusions, are published and copies sent to the parties interested, to common carriers, and to members of Congress.

PROGRESS IN THE WORK OF REGULATION.

In respect to most of its principal provisions, there has been in the past year marked improvement in the disposition of carriers towards compliance with the law. Greater charges for shorter distances, unjust discriminations, and undue or unreasonable advantages favoring particular persons or places or kinds of business, are less frequent. But in the matter of establishing rates and charges, perfecting, publishing, and filing of rate sheets, little progress has been made, and in this the action of railway officials has been unsatisfactory. Especially in respect to joint tariffs of rates and charges the plainest provisions of the law are neglected. The duties imposed upon the carriers by the statute in this respect are frequently left to irresponsible agencies, through which schedules of rates are in some instances filed without authority and at times announced without compliance with the statute.

When afterwards an attempt is made to hold the carriers to their duty as prescribed by any such rate sheet they escape responsibility through the neglect and omission of duty of their own agents.

Among the various devices which have from time to time been adopted by carriers for the purpose of reducing passenger rates without previously publishing notice of the contemplated reduction, as required by law, one deserves special mention.

It was availed of by one of the lines connecting Chicago with St. Paul and Minneapolis.

The price of unlimited tickets over the line in question, from Minneapolis or St. Paul to Chicago was, in March, 1890, \$11.50, and the prices of special limited tickets, between the same places at the same time, were \$7 for first class and \$4 for second class.

The company's passenger rate sheet, in effect on the 12th day of March, 1890, and on file with the Commission, was, as respects rates from Minneapolis and St. Paul to Chicago, as follows:

From—	Day's limit.	To Chicago, Ill.		
		First class, unlimited.	First class, limited.	Second class, limited.
Minneapolis	1	\$11.50	\$7.00	\$4.00
St. Paul.....	1	11.50	7.00	4.00

On the day last referred to, to wit, the 12th day of March, 1890, certain prominent officials of the company in question sold to a ticket broker or scalper in Minneapolis 5,000 tickets, stamped on their face "special limited," at the price of \$7 each, or \$35,000 for the entire number sold. These tickets contained in the margin numbers from 1 to 31, inclusive, representing the number of days in the longest month, and also contained in the margin the names of all the months of the year, and figures expressing each year from 1890 to 1896, inclusive.

So that by means of cancellation of numbers expressing days and years, and of the names of the months, any date might be designated on the ticket from day of issue to December 31, 1896, inclusive. Each ticket also contained on its face the following:

This ticket will not be accepted for passage after date canceled in margin.

In point of fact no dates were canceled in the margin. Criminal proceedings were instituted against the officials of the company who sold the so-called "special limited" tickets above described, based upon the theory that such tickets were in fact "unlimited tickets. The charge of the indictment was, therefore, that the defendants violated the act by charging less to some persons than to others for the same service, etc., transportation from St. Paul to Chicago on unlimited tickets; and (2) by charging less than published rates for such transportation.

The published rate for unlimited tickets it will be remembered was \$11.50, and the price at which the special tickets were sold by the officers of the company was \$7. The court instructed the jury to acquit, holding under the evidence, and under its construction of the "special limited" ticket, that the latter did not carry all the privileges of the "unlimited ticket."

The court held in fact that the tickets in question, while unlimited as to the time within which a journey on one of them might be commenced, were limited to a continuous trip after the journey was once begun.

The evidence disclosed the common understanding of an "unlimited ticket" to be that there was no limit either to the time within which the journey on it should be commenced, or to the right to stop over at pleasure on the route.

The "special limited" tickets being held to differ from the "unlimited ticket" in the latter particular, the theory of the prosecution failed and the proceedings were ineffectual.

In the opinion of the court the "special limited" tickets, so called, differed in respect to the rights acquired by the holder thereof from both classes of tickets described in the published tariff of the carriers. From the *unlimited* ticket mentioned in the tariff, they differed in that they were limited as to stop-over privileges; from the *limited* ticket, mentioned in the tariff, they differed in that they were not limited as to time of commencing the journey under them.

The sixth section of the act to regulate commerce requires that the schedules of rates, fares, and charges, *i. e.*, the tariff, published and filed with the Commission by carriers subject to the provision of the act, shall state separately "any rules or regulations which in anywise change, affect, or determine any part of the aggregate of such aforesaid rates, fares, and charges."

The rule or regulation affecting the price of limited tickets was probably intended by the carrier to be stated in that column of the tariff sheet, of which an extract has been given above, headed "days limit," and fixing the limit at one day, this being understood to mean that a journey on a limited ticket could not be commenced later than one day after the issuance of the same. If this construction of the tariff sheet be correct it would appear very plain that the carrier issuing the so-called special limited tickets violated the law in failing to state on the tariff the "rules and regulations" affecting the same, or in other words the exact particular in which such special tickets were limited.

Had the district attorney framed the indictments against the parties upon this theory of violation of the law, the prosecutions might have been sustained.

If under the law as it now stands the device, which has been above explained, may be adopted by the carriers with impunity, the field would seem to be open at any time for a war of passenger rates between carriers, with all its attendant evils, or at least the provisions

of the act requiring previous publication, posting, and filing with the Commission of contemplated changes in rates may be practically set at naught.

The failure of railroad companies to establish, maintain, and make known to the public the rates the shipper must pay and the names of all the carriers undertaking to carry from place of shipment to destination at the stipulated rate leads to hindrance in continuous carriage, to the denial of equal facilities, to overcharges and abuses.

The following letter, received from merchants in Louisiana concerning the shipment of a single bale of cotton goods, illustrates how abuses result from the failure to establish, in conformity with law, joint rates and charges on continuous lines operated by more than one company:

The following facts are already sworn testimony in a suit now on trial in our parish court, as yet undecided: In July, 1890, was shipped from St. Louis, Mo., * * * to * * * Louisiana 1 bale of lowells or osnaburgs, under a bill of lading properly signed and stamped in every particular as usually required, and a rate inserted of 54 cents per 100 pounds, through to destination. On arrival, \$1.18 per 100 pounds was charged, and upon our refusal to pay same and put in a claim for overcharge, waiting the pleasure of the railroad company to settle same, we were forced into a lawsuit for possession of the goods. The attorneys of the railroad company have availed themselves of every technicality and subterfuge known to our State laws to make us pay the \$1.18 rate in a suit now lasting over a year, and yet undecided. * * *

Appendix C, prepared in the auditor's division, is an instructive report or statement both as to the practices of carriers and requirements of law in the matter of preparation, publication, and filing of schedules of rates and charges; and it must be admitted that, while substantial progress is being made in most of the subject-matters of regulation, there are many abuses still practiced which it was the object of the law to prevent.

COMMISSION DEPENDENT UPON THE COURTS FOR EFFICIENT EXECUTION OF THE ACT.

Considered in its relation to the methods and practices prevailing at the time of its enactment, the law to regulate commerce enacted a new standard of right and wrong, and was intended to completely change many of the methods and practices then in general use in railway management. It was believed by the Commission that a law affecting interests of such magnitude as those involved in the business of railway transportation would not be best administered and executed by such hasty action as would necessarily invite and provoke hurtful opposition and antagonisms; and it was thought both prudent and just that such reasonable time should be given for adjustment to new conditions as might enable the carriers to so modify their classifications, schedules, and methods as to promote their own and the public interests while complying with the law.

Though required to execute and enforce the provisions of the act, the Commission not being invested with power to enforce its own

orders, is dependent for the efficiency of such execution and enforcement upon the courts; and while much progress has been made in the work of regulation and in the general observance of the law, the orders of the Commission are not always obeyed and performed by the carriers to be affected. Within the year, and in compliance with the provisions of section 16 of the act, applications have been made by petition to the United States circuit court, and suits are now pending for the enforcement of orders which, with a single exception, were made in previous years, and one or more of them by the Commission as originally constituted.

Such petitions have been filed:

In the southern district of California, against the Atchison, Topeka and Santa Fé Railroad Company, to enforce an order enjoining that company from making any greater charge on certain articles of general merchandise carried from places of production to San Bernardino, the shorter distance, than is at the same time charged on like articles carried from the same places through San Bernardino to Los Angeles, a longer distance.

In the eastern district of Pennsylvania, against the Lehigh Valley Railroad Company, to enforce an order requiring reduction in the charges for carrying coal from the Pennsylvania anthracite coal regions to New York, and in which proceeding the authority of the Commission to determine what rates are reasonable as well as what are unreasonable is questioned.

In the northern district of Georgia, against the Georgia and other railroad companies, enjoining and forbidding any greater charge to Social Circle, Ga., a shorter distance, than is made to Augusta, Ga., over the same line. on buggies and carriages shipped from Cincinnati, Ohio.

In the northern district of Georgia, against the Georgia Railroad Company, to enforce order requiring equal accommodations and treatment of colored and white persons paying the same fare.

In the western district of Michigan, against the Detroit, Grand Haven and Milwaukee Railroad Company, to enforce order forbidding maintenance of free cartage at Grand Rapids, Mich., which is not maintained to the shorter distance station, Ionia, Mich.

Copies of the petitions and answers thereto filed in the cases in which these several orders were made are found in Appendix D.

ENFORCING THE ACT—CRIMINAL PROCEEDINGS.

The act to regulate commerce contemplates two methods of enforcing compliance with its provisions; one by the imposition of criminal penalties for infractions of the law; the other by civil proceedings in the Federal courts to compel obedience to "the lawful order or requirement" of the Commission.

The tenth section of the act, containing its penal enactments, provides that—

Any common carrier subject to the provisions of this act, or whenever such common carrier is a corporation, * * * any person acting for or employed by such corporation who shall violate the provisions of the act, by way either of commission or omission, shall be deemed guilty of a misdemeanor.

It has been held by one of the circuit judges of the United States, apparently in view of the language above quoted, that—

Corporations acting as common carriers between States are not liable criminally for violations of the interstate commerce act; nor are they exposed to its penalties or forfeiture.

Nearly, if not quite, all carriers subject to the act to regulate commerce are corporations, and it is plain, therefore, under this construction, that criminal penalties can be visited only upon persons "acting for or employed by such corporations," and against such persons, presumably, only when they actually participate in, or are responsible for, the act or omission which the statute condemns. In this respect the law is defective at an important point, and should be corrected by suitable amendment. The imposition of criminal penalties upon railway officials, as well as the corporation itself, where such officials participate in a violation of the law, is unquestionably a wise and salutary feature of the act. Indeed, in those cases where punishment by imprisonment is prescribed, such punishment can, in the nature of things, be inflicted only on a real individual or natural person, and not on an abstract entity or artificial person like a corporation.

In very many cases, however, where the punishment prescribed is a fine, or pecuniary penalty, it is much more appropriate that the real offender, the principal rather than the agent, should be compelled to suffer; and the law-making power has undoubted authority to provide for the criminal prosecution of the corporation itself. Where criminal proceedings are instituted against the officers and agents of a railroad company for violations of the law which in no way inure to their personal advantage, but which are committed in the interest, real or supposed, of the corporations they represent, there is liable to be a sentiment in the minds of the public, and possibly of jurors also, which militates against conviction, even when the evidences of guilt appear to be conclusive. In some instances this sentiment has been assiduously cultivated, and perhaps not without effect; for although it may be believed that a fine imposed upon an official will be paid by the company to which he belongs, yet the obvious fact that some employé, or petty officer is sought to be convicted, while the corporation itself, the real beneficiary of the transaction, not only goes unpunished, but is adjudged incapable of criminal wrongdoing, tends both to nullify the law in the particular case and to bring its penal provisions into general discredit.

In addition to these considerations is the further fact that in many cases, especially where the offense consists in the failure or omission to

discharge some duty required by the law, it is very difficult to determine what particular official is charged with the performance of the duty, and consequently liable to criminal prosecution for its non performance. There may be, for instance, failure to publish and post the tariffs of a railway company, or to publish and post changes therein for the time prescribed. What officer can be held criminally accountable? Against what particular person could proof be made sufficient to justify conviction? Yet, if the corporation itself could be indicted for the offense and fined upon conviction, the evidence of its misdemeanor would be within easy reach, and the justice of its punishment unquestioned.

The tenth section, declaring what conduct, acts, or omissions are misdemeanors and punishable as such, is very broad and comprehensive in its terms.

It is thereby declared to be a misdemeanor to "willfully do or cause to be done or * * * willfully suffer or permit to be done, any act, matter, or thing in this act prohibited or declared to be * * * unlawful," or to "aid or abet therein," or to "willfully omit or fail to do any act, matter, or thing in this act required to be done," or to "cause or willfully suffer or permit any act, matter, or thing so directed or required by this act to be done not to be so done," or to "aid or abet any such omission or failure," or to "be guilty of any infraction of this act," or to "aid or abet therein."

So far as acts of commission are thus made misdemeanors, they consist for the most part in willfully doing or causing or permitting to be done "any act, matter, or thing in this act prohibited or declared to be unlawful."

What, then, are the acts, matters, and things prohibited or declared to be unlawful in the act? They seem to be seven in number, as follows: (1) Unjust and unreasonable charges, as provided by the first section. (2) Unjust discrimination, or charging more or less to one person than to another for like and contemporaneous service under substantially similar circumstances and conditions, as provided by section 2. (3) The giving of undue preference and advantages, or imposition of undue prejudice and disadvantage, as provided by section 3. (4) Charging more for the longer than the shorter haul under substantially similar circumstances and conditions, as provided by section 4. (5) Pooling, as provided by section 5. (6) Charging more or less than published rates, as provided by section 6. (7) Arrangements to prevent carriage of freights from being continuous, as provided by section 7. And in this connection it is to be remembered that section 10, as amended, makes both shipper and carrier criminally liable for willful false billing, false classification, false weighing, false representation of contents of packages, or other devices, to give or obtain transportation at less than published rates.

It will be seen that some of the things thus forbidden and declared

S. Mis. 31—2

to be unlawful are stated in very general and comprehensive terms, which do not in all cases specifically define a particular act or course of conduct. The line between a criminal violation of the law and a mere error of judgment or opinion as to what is lawful or unlawful in a particular case is often very difficult to locate. Precisely what "pooling" is, within the meaning of the act, what charges are "unjust and unreasonable," what is "unjust discrimination" or "undue preference," or what is substantial similarity between "circumstances and conditions," are, for example, questions which it is not always easy to answer. When such inquiries are presented in the course of criminal proceedings it is presumed that juries will depend for guidance or correct conclusions very much upon the instructions of the court; but it may be expected that the well-known rule which in criminal causes gives the accused the benefit of all reasonable doubt will sometimes result in a failure to convict, even where the circumstances disclosed by the evidence would seem to require a judgment against the same party in civil proceedings.

It is probably safe to say, therefore, that the vast number of questions arising between shippers and carriers subject to the provisions of the act, involving general considerations of reasonableness of rates, discriminations, diversity of circumstances attending on the business of transportation, and other like questions, will in general come either before the courts in civil actions for damages, which the act provides for, or before the Commission, upon complaint made to it, at the option of the party alleging a grievance.

The Commission thus has duties of a quasi judicial character imposed upon it, involving the investigation of questions of great intricacy and importance. It has not, however, been clothed with that essential function of a strictly judicial tribunal—the power of enforcing its orders by its own process.

Suppose that Congress should, as probably it constitutionally may, organize a court with power to adjudicate finally all cases and controversies arising under the act to regulate commerce, in what respect, it may be asked, would the powers of such a court differ from the powers now possessed by the Commission.

The most important difference, as above indicated, would consist in the finality and inherent authority of the court's decisions, which would be enforceable by the court's own process.

As the law now stands the decisions of the Commission are not final, and it is without the power to enforce them by any process of its own.

But it is to be remembered that the investigation and determination of controversies originating in complaints against the carriers, based on alleged unreasonableness of rates, unjust discriminations, or other charges of like character, constitute a part only of the duties imposed on the Commission by the act under which it exists. The Commission

is in fact in terms required to execute and enforce the provisions of the act. The question has been raised whether a strictly judicial tribunal, with the power of enforcing its own judgments, can consistently with the spirit of our institutions exercise the various executive and administrative functions which have been conferred upon this Commission.

But while Congress thought proper not to confer on the Commission the power of enforcing its decisions by its own process, leaving their enforcement to the courts on the petition of the Commission or any person interested, it nevertheless provided that the Commission's findings of fact, in any investigation and report made by it, should be deemed *prima facie* correct and true in all subsequent proceedings. And it further provided that the court having jurisdiction of such proceedings "shall have power, if it think fit, to direct and prosecute, in such mode and by such persons as it may appoint, all such inquiries as the court may think needful to enable it to form a just judgment in the matter of such petition."

In the only case where, as yet, these provisions have been construed by a Federal court, it was assumed by the court that, as the law now stands, the whole question passed upon by the Commission may come up to be heard in court *de novo*. If this be so, when the decision of the Commission is sought to be enforced, the court before which proceedings are instituted for that purpose is not confined to the evidence introduced before the Commission, but all such new evidence may be introduced as is pertinent to the inquiries ordered by the court. The law does indeed provide that the Commission's findings of fact shall in all subsequent judicial proceedings be deemed *prima facie* evidence of each and every fact found. But this provision is of less avail than might be supposed, if other and additional facts may be brought before the court, which might as well have been brought before the Commission, and which, if before the Commission, might have produced a result diametrically opposite to that announced. Such a provision so construed "but keeps the word of promise to the ear and breaks it to the hope."

This condition of the law greatly enhances the difficulties of enforcing obedience to the decisions of the Commission, for it will readily be perceived that the Commission's findings of fact in a case made before it are of comparatively little importance if a new set of facts is allowed to be introduced when the matter comes into court. While it is true that the decisions and recommendations of the Commission have generally been acquiesced in by the carriers, there have been a few exceptions to this rule, which practically illustrate the necessity for some alteration in the existing law, as will further on be suggested.

The embarrassment arising from the lack of inherent force and conclusiveness in the Commission's decisions is apparent, and even though they may not have the finality and inherent validity of the judgments

of a court, still it would seem that a character of much greater weight can and should be attached to them than they possess under the construction above referred to. It would seem that the conclusions and findings of fact of a Commission might without impropriety be given at least equal weight and finality with those of a master commissioner in chancery of one of the Federal courts.

What then, it may be asked, is the status and effect of a master's report before the court? A few quotations from authorities will suffice to make this plain.

The report of the master is received as true when no exception is taken; and the exceptions are to be regarded so far only as they are supported by the special statements of the master, or by evidence which ought to be brought before the court, by a reference to the particular testimony on which the exceptor relies. Were it otherwise, were the court to look into the immense mass of testimony laid before the Commission, the reference to him would be of little avail. (See *Harding vs. Hardy, 11 Wheat*, p. 126, opinion by Chief Justice Marshall.)

If the report has been fairly and honestly made without undue influence or manifest error, it should be permitted to stand. It is a matter of no moment that a different result might have been reached had the accounting been taken by the court. If the record shows that there was testimony *pro* and *con*, so that intelligent minds might differ upon the questions presented, the court will not presume to substitute its judgment for that of the master. His decisions upon disputed facts should be final. * * *

A master's report is not to be lightly brushed aside. It is entitled to respect. The proceedings before him have almost the same solemnity as a trial before a referee or a jury, and the familiar rule which precludes the court from setting aside a verdict which is not against the weight of evidence is to a great extent applicable. (See *Welling vs. La Bau*, 34 Fed. Rep., p. 41.)

These quotations suffice to show that the authoritativeness and effect which the law and universal practice give to the reports of master commissioners in chancery of the Federal courts are considerably greater than existing legislation, as its effect was assumed to be in the case above referred to, would accord to the decisions of the Commission when the latter come before the courts. The difference between them consists principally in the circumstance that where the master's report is in question the case made before the master, and that alone, can be considered by the court; no new evidence is admissible, and only that actually adduced before the master can be considered. Nor can even this be considered except to the extent that certain specific portions of it may be called to the attention of the court for the purpose of supporting exceptions specifically made to the master's conclusions or findings of fact.

To enable this to be done, the depositions, exhibits, and other testimony upon which the report is based must of course be returned into court with the report itself.

But when the report is filed the controversy between the parties is confined strictly to matters contained in the report, or in the accompanying testimony, the latter being considered by the court only under the limitations above suggested.

The question is not what the rights of the parties are, or would be, if all the facts and circumstances actually surrounding them were before the court, but what are their rights under the case they have actually chosen to make before the master. The effect of the master's report, in other words, is not merely to shift the burden of proof from one party to another, in a case which is to come up for hearing entirely *de novo*, but it is to confine the hearing in court strictly to the case already made before the master.

Practically the only effect in the courts of a decision of this Commission against a defendant under the construction of the act, which, as above stated, has been assumed, would seem to be to shift the burden of proof from the original complainant to the party against whom the decision was rendered. With this exception, if this construction of the law is correct, the hearing may proceed, so far as the original defendant is concerned, as though there had never been any investigation before the Commission, or any report and decision made by it; or at least the facts found by the Commission may be controverted by other testimony, and new facts may be established by entirely new evidence. This certainly seems rather an impotent conclusion of so much labor and expense as is usually involved in a proceeding before the Commission; and it is hardly credible that either Congress or the commercial interests of the country, or the general public, supposed that the law would bear this construction. That it would be highly desirable that the decisions of the Commission should be given at least the weight and finality of the report of a master in chancery of the Federal courts would seem hardly to admit of doubt. Nor does there appear to be any constitutional objection to the enactment of legislation for that purpose.

Concerning the status of this Commission with reference to the Federal courts the following language has been used by one of the latter tribunals:

The functions of the Commission are those of referees or special commissioners, appointed to make preliminary investigation of and report upon matters for subsequent judicial examination and determination. In respect to interstate commerce matters covered by the law the Commission may be regarded as the general referee of each and every circuit court of the United States, upon which the jurisdiction is conferred of enforcing the rights, duties, and obligations recognized and imposed by the act.

After this explicit statement it seems somewhat singular that it should have been declared by the same judge in the same opinion that

This court is not confined to a mere reëxamination of the case as heard and determined by the Commission, but hears and determines the cause *de novo* upon proper pleadings and proof, the latter including not only the *prima facie* facts reported by the Commission, but all such other and further testimony as either party may introduce bearing upon the matters in controversy.

Having declared the Commission to be the commissioner or referee of

the court, it is surprising that the effect which is accorded to the report of a commissioner or referee should, in the same page of the opinion, be denied to a report of the Commission.

There certainly appears to be no reason, in the nature of things, why that effect can not and should not be given to the reports of the Commission. It is true that in the case of a master's report original proceedings have been commenced in the court itself, and the master acts under an order of reference from the court. But this is of no consequence; the law can surely create a tribunal for the preliminary investigation of any class of questions, give that tribunal's decisions at least the effectiveness of a master's report, and confine the revisory power of the regular courts to the case actually made out before such tribunal.

The commission therefore recommends the enactment of an amendment to the existing law, which shall embody substantially the following provisions and principles relative to hearings before the Commission, and to proceedings to enforce its orders, viz:

That notice of the time and place of hearing, and the opportunity to appear and be heard, shall be given by the commission to all parties interested.

That the production of testimony before the commission shall be governed by the rules of evidence prevailing on the chancery side of the Federal courts, any party being given the right to except to the admission or rejection of testimony.

That the report of the commission, after hearing, shall state specifically what changes, if any, should be made, and what action, if any, should be taken by any common carrier in respect to the matters under investigation, in order to conform its conduct and the management of its business to the requirements of this act.

That a copy of the report, with an order to cease from violating the law, be served on the carriers as now provided.

That in case of disobedience to the order of the Commission, the record of proceedings before the Commission, together with a copy of its recommendations, etc., shall be certified into court, with a petition asking the court to enforce obedience to the order of the Commission, notice of such application being duly given.

That the court shall be empowered thereupon to determine, upon request of parties, whether any matter embraced in the recommendations and order of the Commission entitles the carrier to a jury trial; and to frame an issue covering such matter, if any, for a trial by jury on the law side of the court. On the trial of such issue any relevant legal testimony to be admissible, and the proceedings at and after the trial to be in all respects as if the trial were had in an action at common law.

That as to all matters embraced in these commendations and order of the Commission not requiring jury trial, or as to which jury trial is not demanded, the court sitting as a court of equity shall proceed to hear and decide them, notwithstanding the pendency of any issue for jury trial.

That the hearing by the court, as to all matters not requiring jury trial, shall be confined to the record of proceedings had before the Commission, and to such errors in the record as shall be specifically pointed out by parties alleging error therein.

That if the record discloses no error in the recommendation and order of the Commission, plainly prejudicial to the parties alleging error therein, the court shall enforce the same by proper process.

That if the record does disclose error in the recommendations and decisions of the Commission, plainly prejudicial to the parties alleging error therein, the court shall either make such final order as may be proper, or recommit the case to the Commission.

The constitutional guarantee of jury trial, it is believed, is here fully met; and, in cases not requiring jury trial, every requirement for the validity of a master's report and for its return into court, with the evidence on which it is based, is here provided for.

Every year of the Commission's experience only confirms its opinion of the necessity for this amendment. No more authoritativeness, it is to be remembered, is asked for the reports and decisions of the Commission than the law and universal practice gives to reports of masters in chancery of the Federal courts. With less than this the investigations of commissions generally can, to use the language of Chief Justice Marshall quoted in a preceding page, "be of little avail."

The Commission believes that it would also be wise to provide in the act for rehearings by the Commission of cases which have been heard and decided, either by the Commission or in court, where a change of circumstances and conditions may render expedient a modification or reversal of previous orders.

UNIFORM CLASSIFICATION.

In every report heretofore made by the Commission the question of a uniform classification of freights has received attention.

In the report for 1887 the origin and diversity of classification of freights was treated of, the general necessity for a classification was discussed, the desirability of uniformity was explained, and some of the difficulties in the way of accomplishing uniformity were set forth. Some of the principles underlying the system of classification were also examined, as illustrating the difficulties in the way of arriving at uniformity upon all lines and in all sections of the country. The opinion was however expressed that despite all these difficulties the tendency was in the direction of uniform classification, and a doubt was expressed whether that tendency would be hastened by conferring upon a National Commission the power to make a common classification of interstate traffic for the interstate carriers of the country.

In its next report the Commission was able to state that very considerable progress in the direction of uniformity had been voluntarily made by the carriers during the preceding year. Attention was in that report particularly called to the adoption by the trunk lines, so-called, of the official classification, which to a large extent superseded a number of independent and conflicting classifications which had previously prevailed in the territory east of the Mississippi and north of the Ohio and Potomac rivers, a section where a greater volume of business is done by the railroads than in any other part of the country. It was observed of the official classification that it had not at first been entirely satisfactory to the parties agreeing upon it, and that it had from time to time been somewhat changed, though not radically. Other con-

solidations of conflicting classifications into one, or a few, of comparative harmony were shown to have been accomplished within certain fairly well-defined sections of the country.

The principal classifications then prevailing were stated to be the Official, the Western, and the Southern Railway and Steamship Association classifications, existing, respectively, in the sections of country roughly outlined as follows: The first in the territory east of and including Chicago and St. Louis and north of the Ohio River; the second in the territory west, north, and southwest from Chicago and St. Louis; and the third, in the territory south of the Ohio and Potomac and east of the Mississippi. Mention was made in this report of an effort made by a conference of railway representatives to merge the Official and Western classifications into one, a result which, if accomplished, would have been a long stride in the direction of uniformity, but which, unfortunately, failed of being realized. The reasons for the failure were thus given in the report on classification adopted at the conference referred to. The report is here given at length, because it may be presumed to be a presentation from the carriers' standpoint of the difficulties attendant upon the formation of a uniform classification.

The committee, consisting of representatives of the trunk lines of the Central Traffic Association and of the organizations extending westward from Chicago and St. Louis, appointed to prepare for submission a classification which should govern in the interchange of all freight traffic, excepting that destined to and from the Pacific coast, at its last meeting held in New York July 19 and 20, 1888, unanimously

Resolved, That this committee, while recognizing the desirability of a uniform classification, report that after patient and prolonged conferences held for the purpose of formulating such a classification, it is unable at this time to agree upon one which it can recommend for adoption.

Among the reasons which led to the foregoing conclusions may be stated the following:

When the joint conference committee was appointed in September last it was believed the time had come for the adoption of one classification which should govern on all freight traffic interchanged between eastern and western railroads. The disparities which prevailed in the classifications used respectively east and west of the Mississippi River had been brought to the notice of various authorities, State and commercial, and they in turn had drawn the attention thereto of the Interstate Commerce Commission. The last-named body, it was thought, would be obliged to move in the direction of greater uniformity in freight classification, and rather than by waiting invite such action, those who spoke for the railroad companies advised that steps be taken to at least remove the more glaring differences which existed between the classifications of the eastern and western roads. Moreover, the progress of events had pointed plainly in the direction of uniformity. Previous to the adoption of the interstate law there were numerous classifications in effect in the territory served by the trunk lines and their affiliated roads. With a zeal and pertinacity unprecedented, a committee representing the lines just described had, a few weeks before the interstate law became effective, addressed themselves resolutely to the task of consolidating into one the various classifications which long had been recognized between the Mississippi River and the Atlantic seaboard, thus creating one classification adapted to the requirements of the traffic in the most populous

district of the country. Not only were there numerous local classifications thus to be taken up, but the rates and the classifications were not the same eastward bound as they were westward bound on the traffic interchanged between the East and the West. Westward bound there were but five regular classes, while eastward bound there were thirteen.

To make the rates applicable in either direction and embrace the numerous commodities within six classes was, therefore, a great undertaking; but, although many were skeptical regarding the outcome, patiently and persistently it was carried to a successful completion. The trunk lines having thus adapted to their local and through freight traffic in either direction one classification, known now as the Official, it was urged that the way had been paved for the march still further toward uniformity. With that view your committee was appointed, and in the hope of achieving ultimate success the work was begun.

Six conferences were held, in addition to the one at which this report was agreed upon, each extending over a period of several days. Soon it became apparent that radical differences existed in the requirements and conditions of the sections east and west of the Mississippi River respectively. The former desired not to increase the difference between the less than car lot and the car-lot rates on the same commodities, and to preserve as nearly as possible the relations they had established between the several classes, while the latter urged that on account of the cost of operating and the comparatively small tonnage in the sparsely settled West, they could not afford to add to the number of less than car-lot classes, nor could they profitably handle and foster their traffic without exercising greater latitude than was proposed in the making of rates and the differences between the same. Hence, they desired that eight classes be adopted, with the understanding that all less than car lots be included in the first four classes, thus limiting the remaining four classes to articles carried in car lots.

Such a proposition, while manifestly in the interest of the western lines, because adapted to their circumstances and essential to their profitable operation, could not consistently be accepted by the trunk lines. For years the latter had operated without any difference in merchandise rates westward between car lots and less; therefore, when they consented to the adoption of six classes and the recognition of numerous car lots, as shown in the official classification, they had gone quite as far as it was believed they could with safety go, in view of the long-established custom prevailing in this respect throughout the territory between the seaboard and the Mississippi River. The result was, at this point, a difference in views between eastern and western members, which could not well be reconciled; and the work subsequently done by the committee, in proposing to rate less than car lot articles below fourth class was in most, if not all, cases affected by a majority vote—the East having eight and the West seven members of the committee.

Notwithstanding this difference, lines leading to the Missouri River were disposed to proceed with the work, and if possible adopt one classification to govern between the Atlantic seaboard and the Missouri River points, Saint Paul, and Minneapolis. Resolutions looking to that end were at one time adopted by western and north-western lines, but before the suggestions made could be carried out events took another turn.

From causes not necessary now to be enumerated the western roads became involved in a widespread and disastrous rate war, during which those in civil authority intimated they might be obliged to prescribe for the roads schedules approximating the charges which at times had by the carriers been voluntarily made. Accordingly, when the Iowa commissioners promulgated a schedule of rates for the roads in that State which, by the companies interested, was considered ruinously low, the authorities in Nebraska and Minnesota gave notice of their desire to follow the example set. Thus the Western roads were confronted with reductions which in no event could they expect wholly to escape. Through tariffs to Missouri River

points had already been greatly reduced, and local rates in Iowa, Minnesota, Nebraska, and Kansas were certain to reach a level not anticipated by the most despondent when the work of your committee was begun. The effect of those reductions upon the revenues of the Western roads was viewed by the managers with alarm, and as they had been informed the adoption of the classification outlined by your committee would involve them in further reductions, they were understood to shrink from assuming an additional loss which they could just as well avoid.

Besides, the question of practicability had not been fully considered when it was proposed to carry a union classification as far as the Missouri River. Lines leading from Chicago and St. Louis own, operate, or control several thousand miles of road west of the Missouri River. If they should attempt to use one classification to and another west of the line just described it would oblige them to divide their systems at that point, inasmuch as through tariffs could not be issued in simple form from Chicago, St. Louis, and points common therewith, as they now are, to the multiplicity of stations west of the Missouri River, unless one classification should govern throughout. Otherwise they would be compelled to print commodity tariffs to the many common points on their own lines and those of their connections west of the Missouri River. This, it was evident, could not readily be done.

Meantime, the position thus taken was confirmed by the action of roads interested in the transcontinental and other traffic. Those lines met early in June, and at once set about formulating freight tariffs, subject to the Western classification. This involved a vast amount of labor, inasmuch as the various articles enumerated had to be carefully scanned, and a considerable number requiring special treatment were placed in commodity lists. With those exceptions, it was agreed that the Western should supersede the Pacific coast classification on business from Mississippi River points and Chicago destined to the Pacific coast. At the same time an award, by one chosen to determine certain disputed questions pertaining to El Paso and other traffic, decreed that the Western classification should hereafter govern on freight destined to El Paso, Eagle Pass, and the Republic of Mexico, and tariffs were issued accordingly.

Shortly before the Texas connections of the Fort Worth and Denver City Railroad had consented to adopt the Western classification on business carried to and from Colorado and Utah. Furthermore, the Texas lines signified their willingness to unite with the Western roads in the adoption of a joint classification. Hence, it was presumed that within a brief time there would practically be but one classification in use in the territory west of Chicago and the Mississippi River. The impression was that in thus securing uniformity in the territory west of that reached by the trunk lines, they would possibly be accomplishing as much as did the latter when they consolidated into one the many classifications which previously governed in the district between the Atlantic and the Mississippi, north of the Ohio River.

The divergent views hereinbefore described as held by your committee have been honestly entertained, and the conclusions reached, both on the part of the East and the West, are such as the varying circumstances and conditions of each section seem to make necessary. It remains for your committee to express their sincere regret that after so much earnest toil their expectations of being able at this time to submit for your approval a joint classification are doomed to disappointment.

The Commission was disposed to recognize fully the embarrassments of the situation as here depicted, and deemed it its duty to state "that all action taken on the subject should lead toward uniformity, but that to force it at once would be undesirable." It was deemed proper, also, to call attention to the fact that the carriers are by no means the only parties to be affected by a general harmonizing of the various classifications. As classification is but a general method of establishing rates

on different commodities of commerce, the existence of a different classification of any article on different railroads means, generally speaking, a different rate charged for transporting it. Unifying the classification would mean, therefore, a change in the rate. The carriers in making the change might very well, in adjusting the general average of charges, protect themselves, to a large extent at least, from the loss arising from reductions on certain commodities. But the business interests of the different communities to be affected, having no means of recovering by increased prices on one line of goods the losses they might sustain by reason of increased traffic charges on another, might frequently, for a time at least, suffer serious detriment from the change.

The Commission summed up its conclusions on this subject in the report for 1888 as follows:

(1) Uniformity in classification, as fast and as far as it can be accomplished without serious mischiefs, is desirable.

(2) There is gratifying progress in the direction of unification, and it has been very marked within the last year.

(3) So long as the carriers appear to be laboring towards unification with reasonable diligence and in good faith, it is better that they should be encouraged and stimulated to continue their efforts than that the work should be taken out of their hands.

(4) In view of the mischiefs that would flow from sudden changes, ample time should be given for the purpose.

Uniform classification can only be wisely and safely made by careful study and deliberate action, and the adjustment of rates to it needs corresponding caution and deliberation.

The carriers certainly could not fairly infer from this language that the Commission intended to abandon the efforts it had since its organization persistently made to bring them to act upon this important subject. Yet during the next year no very great progress was made in the direction of uniformity, and in the opinion of the Commission no proper effort was made by the carriers to that end. Something, it is true, was accomplished by the absorption into the three principal classifications of the country—namely, the Official, the Western, and the Southern Railway and Steamship Association—of the special and exceptional classifications existing in the territories respectively covered by those principal classifications.

But in its annual report for 1889 the Commission, in reference to the progress made by interstate carriers in the matter of uniform classification, felt it proper to say:

It is to be regretted that the results attained have not been equal during this period to what the indications then existing led us to expect might be accomplished at the time of the presentation to Congress of our second annual report.

In September, 1888, shortly after the announcement of the failure to consolidate the Official and Western classifications, the attempt at which has been referred to above, a resolution was introduced and passed in the House of Representatives directing the Commission

prior to January 1, 1889, to prescribe one uniform classification of freight for the use and guidance of the various railroads of the United States engaged in interstate commerce. The resolution, however, failed in the Senate, representations having been made that if the railroad companies were given further time they would obviate the necessity for Congressional action. The failure of this resolution to pass the Senate was a circumstance which the Commission did not regret, since it appeared then, as it does now, that the action desired could be taken by the railway authorities themselves, if they could within any reasonable time be induced to act, with much less risk of injury to the financial interests of the carriers and of the public than would probably attend the efforts of the Commission or any other public agency to establish a uniform classification.

Prompted, partly perhaps by the disposition thus manifested in the popular branch of Congress and urged thereto by the pressure constantly brought to bear by the Commission, or it may be in the general interests of commerce and with a view to the benefits to be ultimately derived by the carriers from uniformity in classification, a call was issued by the leading traffic associations in November, 1888, for a conference of railway representatives upon this subject. The conference met in Chicago in the following December, and from the general attendance upon it appeared to promise good results. Eight traffic associations were represented—the representatives coming from the Pacific States, the South, the West, the Middle, the East, and New England. Nothing was done by the conference itself further than to pass resolutions to the effect that greater uniformity in the classification of freight is both desirable and practicable, but that the magnitude and diversity of the interests involved are such that strict uniformity can not be reached by forced or hurried measures, without injury to business, while it may be approximated by frequent conferences and constant effort on the part of the carriers. The conference, however, appointed a standing committee, composed of two members from each of the traffic associations, for the purpose of unifying as rapidly as possible the several classifications in force. This committee was instructed “to endeavor to combine the existing classifications in one general classification by the use of such number of classes as will prevent conflicting commodity as well as class rates in the several sections of the country, without sacrificing the proper interests of the carriers.”

This committee met in Chicago in February, 1889, with a full representation either in person or by proxy, and remained in session seven days. But nothing practical was accomplished. The same question between the interests of the East and the West appears to have divided the committee as resulted in the failure of the previous year's conference. The Western representatives claimed that they had not sufficient representation on the committee, and an adjournment was had to meet in New

York in the following June. By that time the representatives of several of the Western and Southwestern associations had withdrawn from the committee. The remaining members, after inviting those who had withdrawn to return, but without success, held a four days' session at Saratoga in September, and a session of one day in New York during the same month. Subsequently the committee met in Washington City from the 19th to the 23d of November, 1889, but accomplished apparently nothing of any consequence.

The entire time devoted by the committee during nearly a whole year to the prosecution of the great work set before it was thus, it will be observed, only about fourteen days, and those not days of consecutive effort in a single place, but at various times and places, for the most part widely separated.

The effort made seemed quite inadequate to the magnitude of the work to be accomplished. The list of articles to be classified embraced nearly six thousand items, the proper placing of which would in many cases involve protracted discussion. The membership of the committee was composed for the most part of general freight agents of various lines, and the excuse made for their short sessions was the pressure of the engagements and responsibilities incident to their official position.

The Commission was unable to entertain the opinion that the excuse was sufficient to justify the committee for its failure to devote more time to the work, or to accomplish at least some permanent and valuable results. And in this connection the following language was used in the annual report for 1889:

While it is true that it does require men of judgment and experience, well versed in freight matters and in the business and interests of localities, to perform well the task of preparing such a classification, yet it would not seem to follow that the only person possessing such experience and capacity that could be found to represent each of the great freight associations would necessarily be a general freight agent; and if it be considered that the general freight agent's presence is necessary in the work of such committee, then it does not appear to follow that some other suitable arrangement can not be made by the carriers for the place of the general freight agent being properly filled by some other competent person, temporarily, while the general freight agent is engaged in the important work of preparing a uniform classification to be submitted to the carriers for their approval or rejection. A work of this character and importance, in view of the provisions of the act to regulate commerce and the general interests of the country, should be made the subject of more than a few days' meetings at long intervals from time to time during the course of a year. When such a report is made as a recommendation it will doubtless undergo then most careful scrutiny and revision at the hands of the carriers and will be antagonized in many instances by local and special interests; and while this is a reason that it should be well and carefully prepared in the first instance, it is also a controlling reason that it should be framed at as early a period as it can reasonably be done.

The Committee on Uniform Classification did not, however, entirely disband, but proceeded with great zeal on the part of some of its members to meet from time to time until June, 1890. Meantime a portion of the members from the West and Southwest, who had formerly with-

drawn from the committee, resumed attendance upon its sessions. Finally on the 21st of June, 1890, at a session in the city of Buffalo, a report and classification was agreed on for submission to the associations represented. These were the New England Freight Association, Central Traffic Association, Western Freight Association, Mississippi Valley Railroads Trunk Line Association, Southern Railway and Steamship Association, Trans-Missouri Association, and Southern Interstate Association. To these organizations, covering, as indicated by their names, far the larger and most important portion of the traffic of the whole country, the report and classification agreed on by the committee was at once submitted.

This report was full, able, and candid in all respects, in fact an admirable document. It reviewed the history of the committee's work and the many and serious perplexities which had beset it. The necessity for greater uniformity was freely admitted; the continuous operation of the interstate commerce law, it was said, made this plain.

In deference thereto, and also to meet the demands for through lines, it became essential to facilitate the quotation of through rates between points far removed. This could most readily be done by the issuance of tariffs governed by one classification. If two or more classifications were used, resort must be had to numerous commodity tariffs. Moreover the disparities encountered proved annoying to shippers and embarrassing to the roads. The public failed to perceive, nor was it always possible to explain, why articles of common use should be classified differently, east and west or north and south of certain dividing lines. * * * Demands for greater uniformity in the classification of freight and the rules governing its transportation had been so frequently voiced that they could not be ignored. At the same time members were mindful of the obligations imposed by their official relations, hence they labored assiduously to preserve the revenues of the carriers, while they endeavored to deal justly with the public.

Yet, "while at no time forgetful of the interests they usually represented, the desirability of also regarding matters from a national rather than a sectional standpoint predominated."

Referring to the instruction given the committee "to endeavor to combine the existing different classifications in one general classification," it was said:

That instruction your committee kept steadily in mind, and having confined themselves to classifications with which they were familiar, instead of venturing into unknown depths in the way suggested, they are enabled to affirm with more certainty than might otherwise seem proper that the adoption of the proposed classification will not result as the alarmists fear, nor will it involve the roads in sacrifices they can ill afford to bear.

A scheme for the establishment of a permanent organization, to have charge of the classification and changes therein, was also presented. Finally the principal recommendation of the committee was that—

The uniform freight classification be adopted for the government and use of the railroad and steamship companies comprised in the associations and territories hereinbefore named, that it be made effective January 1, 1891, and that meetings of the different associations or carriers directly concerned be called as soon as may be convenient for the consideration of this report.

The circumstances under which this report originated and was adopted, the qualifications and official positions of the members of the committee which framed it, its very explicit declaration of the need of reform in the matter of railway classifications, the assurance of the committee that the reform proposed by them would not involve the roads in sacrifices they could ill afford to bear, and the committee's earnest recommendation of the proposed uniform classification for adoption by the carriers, naturally led to the belief that favorable action would be taken upon it.

This Commission, in its annual report for 1890, therefore declared that a very long step had been taken towards the final accomplishment of the great work of unification, and "with the highest gratification affirmed its confidence that the time is not far off when one classification of freights, for the purpose of rating for transportation by rail, will cover the whole territory which is subject to the Constitution and laws of the United States."

Public indulgence on behalf of the carriers was again asked during the trying period of transition from the old to the new state of things which was expected to follow upon the taking effect of the proposed uniform classification. And it is believed that the public was and is prepared to suffer the evils necessarily attendant upon the change, looking to the ultimate general benefit to be derived from it.

In States where, in pursuance of legislation, classification has been established by public authority, an evident disposition was shown to facilitate the general reform by conforming the State classifications to the uniform standard proposed. The Railroad and Warehouse Commission of Illinois, for example, notified the carriers by circular that—

The commission will at an early day adopt their tariff of rates to said classification, and cause the same to be printed, together with said classification, and furnished to the several roads of the State before January 1, 1891, as provided by law.

The difficulties of the situation rendered it expedient in the opinion of the carriers to postpone the time for the taking effect of the new classification till March 1, 1891, and meantime some of the traffic associations found in it objections which appeared to them insuperable, so that when the 1st of March came nothing had been done. About that time the term of the House of Representatives expired, and the session of Congress came to an end, and along with it came to an end all further effort on the part of the carriers towards a uniform classification.

The position of the Commission and of the carriers upon the subject, as well as the history of the progress by which that position has been reached, has been set forth above with some detail in order that the whole matter may be in definite shape before Congress for its consideration.

The progress and present status of the several systems of freight classification in the United States, both in their relations to each other

and especially as regards the working and effect of the several systems within the territories to which they respectively apply, are treated quite fully in a report made to the Commission, under date of November 26, 1890, by its auditor.

This report is published as Appendix C in the annual report of the Commission for 1890. It presents some of the benefits to commerce which have resulted from the harmonizing of classifications which has already been accomplished since the organization of the Commission, and suggests the further benefits likely to follow upon a more complete unification.

This report or statement shows that the three principal classifications of the country are still those heretofore named, and the territorial limits of whose operation have been described, namely, the Official, the Western, and the Southern Railway and Steamship Association Classification.

In each of these territories, however, there exist certain local and independent systems of classification more or less in conflict with the principal system. These, it was hoped, would all be superseded by the proposed new uniform classification. Their existence, of course, is a constant source of embarrassment. Of the general situation in this regard it may be said that, while it is a great improvement on that of five years ago, it is still very far from being satisfactory.

The commercial organizations of the country have taken up the question with great earnestness, and the commission has received communications and resolutions from many of them asking co-operation on the subject of legislation in the direction of uniform classification which they purpose asking Congress to enact.

The following is a sample of the resolutions referred to, being those received from the Indianapolis Board of Trade:

Whereas the commercial necessities of the nation demand that the relations between common carriers and the public be in all respects so simplified as to avoid misunderstandings, misconceptions, or injustice;

Whereas in the direction of securing clearness of understanding as to respective rights of carriers and shippers, the first step seems to lie in the establishment of uniformity in bills of lading and of classifications;

Whereas the carriers of the country being apparently unable to agree among themselves concerning the methods whereby such uniformity can be secured:

Resolved, That the Senate and House of Representatives be, and hereby are, earnestly requested to take such measures as may in their judgment seem proper, to compel the carriers of the United States to furnish all shippers *a uniform bill of lading in which the common law liability only of said carriers shall be expressed*, and the early establishment of a *uniform classification*, the rules and conditions of which shall be just and reasonable.

Resolved, That the Senate and House of Representatives are hereby requested to accord to the shipping interest a hearing by representation from the National Transportation Association.

Resolved, That the *coöperation of the Interstate Commerce Commission* in the establishment of these principles is urgently requested.

These resolutions, it will be observed, have in view uniformity in bills of lading as well as in classification, and dwell upon the necessity of the former as well as of the latter.

The question of bills of lading will be treated further on in this report.

In complying with the duty imposed upon it of making recommendations to Congress in regard to additional legislation deemed necessary, upon questions connected with the regulation of commerce, the Commission is, as respects the matter of uniform classification, relieved to a considerable extent of the embarrassment it would otherwise feel by the action already taken by the carriers.

Its conviction remains unchanged that the necessities of commerce require that the existing classifications be consolidated, and that this result should be accomplished as speedily as may be found practicable; and it does not feel justified in asking for the further efforts of the carriers the same measure of indulgence which from time to time it has heretofore suggested should be extended to them, and which was thought to be required in the public interest.

The fact that representatives of the carriers of various sections of the country which now make use of different classifications have met and maturely considered the subject, and have agreed that consolidation is highly important, and have fixed upon a general basis for it, which has been accepted by a large majority of the carriers, has greatly lessened the difficulties in the way of legislative action. Uniform classification, in view of the action taken by so large a majority of the carriers, can no longer be considered impracticable.

The Commission can not but think that if legislation to that end be enacted by Congress the carriers will speedily consummate the reform already begun in this direction. It is therefore recommended that an act be passed requiring the adoption within one year from the date of its passage of a uniform classification of freight by all the carriers subject to the act to regulate commerce, and providing that if the same be not adopted within the time limited, either this Commission or some other public authority be required to adopt and enforce a uniform classification.

The Commission desires to repeat, what it has in substance said before, that it is its firm conviction that no public agency can possibly be so competent to deal with this question as the carriers themselves. The existing classifications are the result of long study in immediate practical connection with the transportation interests of the different sections of country represented by them, and the experts who have made them, have, in gradually bringing them to the condition in which they are now found, represented quite as much the conflicting and competing interests of different sections as they have the conflicting and competing interests of the carriers themselves. Any tribunal which

should be created or designated for the purpose of unifying their work would necessarily begin with making careful study of these several interests on all sections, understanding as it must that while unification would be to the general benefit of the country, there must unavoidably be changes which, while benefiting some interests and some sections, must throw corresponding loss or injury upon other interests or sections, and this not unfrequently in the same line of business.

But however carefully such a tribunal might study the general question, it could not fail to find, when making its final determination, that the highest wisdom would require that it should keep as closely as possible to the results of the work which experts have so long been engaged in perfecting, and that in making necessary changes it should anticipate, as nearly as human foresight would enable it to do so, the probable conclusions that the same class of experts would be likely to reach if they themselves under the pressure of a legal necessity should perfect their now incomplete work. And it should never be forgotten that when unification is finally accomplished, whether by the voluntary action of the carriers themselves or as a result of compulsory legislation, there must be a transition period while the country is becoming familiarized with it, when some degree of embarrassment and dissatisfaction is to be expected, and when large demands will be made upon the patience and forbearance of the general public while business is adapting itself to the working of the new order of things.

USE OF SHIPPERS' CARS.

The management and operation of the American railways to-day furnish a striking instance of a departure in actual practice from original economic theories.

The conception of the railway and of the functions of its owners, as entertained when these new facilities for trade and travel were first introduced, was naturally drawn from analogies with which the public was then familiar.

The turnpike, whose owners had no interest or ownership whatever in the vehicles that passed over their roadway, illustrated the theory upon which it was supposed the railway would be developed. The latter it was thought would differ in degree rather than in kind from the former. The function of furnishing the highway, and that of providing the vehicles for carriage upon it, would be in entirely different hands, and the charge for each service would be separately imposed. The transportation service would thus be rendered, it was supposed, under the same, or somewhat the same, competitive conditions as had always been relied on to insure reasonable charges for transportation over the turnpike.

As to the tolls or charges imposed by the turnpike company itself for the passage of vehicles over its road, they were usually fixed by law.

The first railroad charters were drawn, to a large extent, under the influence of the theory here referred to. But very early in the history of railroad transportation, perhaps as soon as it became thoroughly settled that steam and the steam engines were to supersede, on the new highways, the use of horses or other animal power which had been employed on the old, the dangerous qualities of the new motor suggested that it could not be safely used under conditions of free competition in transportation over railways.

In some cases it was then provided by law that every railroad company should have the exclusive right of transportation over its own line. And whether by law, custom, or a general recognition of its necessity, the practice soon became universal for the railroad company to furnish in all cases the motive power and generally, in the United States, the vehicles of carriage as well.

Under the turnpike theory of "tolls," the owner of the vehicle would pay to the owner of the road the sum fixed by law, or by agreement between the parties, for the privilege of passing the vehicle over the road. Then if the owner of the vehicle were himself a carrier he would make his own charges to his patrons. Since, however, the railway company has become the exclusive carrier over its line, as well as the owner of the road itself, the idea of "tolls" in the sense of a payment to the company by the private owner of a car, for the passage of the car over the road, has become for the most part obsolete.

After the necessity for the exclusive control of a single company over the transportation and general operations of the railroad became finally settled, the use of other cars than its own was, during a considerable period at least, unusual. As soon, however, as the sagacity of railway management, prompted by the demands of commerce, undertook the establishment of through routes of trade and travel over connecting lines, the necessity for the passage of the cars of one company over the lines of another, to save the trouble and expense of breaking bulk or transferring contents, became clearly apparent.

But in the adjustment of the relations between the owner of the road over which the car was to pass and the owner of the connecting road to which the car belonged, the idea of a payment of toll for the carriage of the car, by the latter to the former, was discarded, and the idea of a hiring of the car by the former from the latter was adopted. Under the conditions of interchange of traffic and of cars, between connecting lines, where the use made by each of the cars of the other, or others, would in the long run be nearly equal, the amount agreed to be paid for such use would not be very material. A striking of balances between the mutual accounts would bring the parties out pretty nearly even. Whether or not under these circumstances the amount agreed to be paid for the hire of cars is actually more or less than a fair compensation for their use, is a comparatively unimportant question. The question, however, becomes one of great importance in connection with

the use of cars belonging to private shippers in transportation over lines of railway.

In the growth and development of railway traffic it became evident that many commodities might be transported to much greater advantage in certain kinds of cars specially adapted to the character and peculiar qualities of the particular traffic than in the ordinary cars furnished by the carriers. The latter did not always respond to the demand for improved vehicles of special pattern, but frequently failed to provide them in their own equipment. Hence, by agreement between shipper and carrier, the former often undertook to provide his own cars for shipment of his particular commodities.

Here again the idea of the shipper paying to the railroad company a toll for the passage of his car over its road was discarded, and, in analogy to the custom prevailing between connecting carriers in respect to the use of each other's cars, the railway company became a hirer of the shipper's vehicle.

It is worth while to note in this connection that although this theory of charging "tolls" for the carriage by railroad companies of cars belonging to others has long been abandoned in practice, and the principle of hiring substituted for it, yet in legislative enactments on the subject the idea of "tolls" still frequently finds place. The original signification of this word was in fact rather that of a payment by the owner of the vehicle to the owner of the highway than that of a charge for the carriage of goods. In its modern use the latter meaning no doubt is often intended to be attached to it. But the language of legislation frequently specifically provides that one railroad company shall draw or carry, on reasonable terms and for a reasonable compensation, the cars of any other company or person when tendered to it for transportation.

The modern practice and customary arrangements seem, in fact, to be lost sight of in legislation.

This modern practice, it will be observed, consists in the hiring by the carrier of the owner's car, instead of payment by the owner to the carrier for the passage of the car over the road.

The origin and development of this practice has thus been briefly traced, with the view of arriving at a clear understanding of the custom of using the shippers' own cars in transportation, and of the effects of that custom. For there is no doubt that it can be made, and often has been made, the means of discrimination, on the part of the carrier, between shippers, of a character and to an extent altogether unjustifiable.

Apart from the element of compensation allowed by the carrier to the shipper for the use of the cars of the latter, the shipper has sometimes insisted, and the carrier has conceded, that the circumstances and conditions of transportation, in cars furnished by the latter, were so different from those attending the carriage in the cars of the former,

as to justify a greater charge per hundredweight or other unit of transportation in the one case than in the other. This view was urged with great earnestness in certain cases which have come before the Commission involving the relative transportation charges on oil shipped in barrels upon the carriers' cars and the same commodity shipped in tank cars belonging to the shipper.

It appeared that the practice of the carrier had been to publish its carload rates for oil in tank cars and for oil in barrels respectively, and the latter were greater per hundred than the former. The carrier itself, however, never furnished tank cars to shippers, having in fact none in its equipment.

This of course meant that such shippers as were able to provide themselves with their own tank cars would have a great advantage in business over their competitors who were obliged to depend for the transportation facilities on the equipment provided by the carrier itself.

Such at least would always be the case where the amount paid by the carrier for the use of the shippers' car constituted more than a fair return on the value of the car as an investment. The amount so paid probably never fails to reach this standard, and, as will be presently shown, may under certain circumstances go far beyond it.

Assuming, however, that such payment would be a fair allowance by the carrier for the use of the car, and no more, the question of the carriers' right to discriminate in charges between the two methods of transporting oils remained to be decided. The argument of the carrier was that the rate charged for each mode of transportation was of itself reasonable and just; that it was no more than a fair equivalent for the service rendered in each particular case.

Any shipper, it was said, by providing himself with tank cars could have the benefit of the lower rates accorded to that mode of transportation.

The reply to the first suggestion was that the question of the reasonableness of the rate was usually, to a large extent, a relative one. Therefore, in determining the reasonableness of the charges on barreled oil in carriers' cars the Commission felt constrained to keep in view the disparity between them, and the rates charged by the same carriers upon the same commodity, when offered in cars furnished by the shippers. In regard to the suggestion that any shipper is at liberty if he chooses (and be able) to furnish his own cars, the reply was that it is properly the business of the railroad company to supply their patrons with suitable vehicles of transportation and to offer the use of them to everybody impartially.

The fact that such duty is imposed upon the carrier constitutes a very forcible reason why its customers, who are forced to make use of such facilities as it provides for them, shall not find its own want of rolling stock made a ground of discrimination against them.

The effect of the Commission's decision on this particular question was

to cause a general lowering of rates on oil in barrels and a general raising of rates on oil in tanks. But it soon became apparent that the discrimination between the two methods of transportation was only partially removed.

Since the railroad company is generally the exclusive carrier over its own road, it would certainly seem a reasonable requirement that it should be held to the duty of keeping constantly on hand for public use such cars and other facilities as the ordinary demands of traffic may be shown by experience to require. It might perhaps be going too far to say that the railroad company should always provide the most improved vehicles, or the latest devices in railway equipment, for the use of its patrons. But it certainly is its duty to use the utmost care to see that its failure in this respect shall not contribute to the creation of an unjust discrimination between its customers.

Now if the carrier provides only the ordinary box cars for the transportation of oil, so that it can not be carried in bulk, but must be put up in barrels, while at the same time it carries oil in bulk in shippers' tank cars, a case is presented for the practical application of the principle above announced. The shipper being able by means of his tank cars to dispense with the use of barrels is relieved of the payment of freight on so much dead weight as the barrels represent. The necessity of the ordinary shipper by barrel in the companies' cars paying freight on the weight of barrel as well as oil evidently puts him at a disadvantage to that extent in the competition with the shipper in tanks. This disadvantage results directly from the carriers' failure to furnish tank cars, and it is incumbent on the carrier to see that it shall not be imposed on the shipper who is obliged to use its common cars. Unless it does see to this, the carrier is guilty of unjust discrimination. The Commission has accordingly held, in certain cases which have come before it, that the carriers' practice of charging for the weight of barrels, in case of oil shipments in carriers' cars, while not charging for the weight of the tank in which the oil is transported in shippers' cars, is unjust discrimination. This conclusion was resisted by the suggestion that the tank was merely a part of the car and no part of the merchandise, while the barrels containing oil were as strictly merchandise as the oil in them, and hence equally with the oil should bear a freight charge in favor of the carrier.

This suggestion, however correct, technically speaking, it may appear to be, points as a practical result toward upholding what plainly appears to be an unjust discrimination between shippers. A more substantially correct view of the matter would seem to be to regard both tanks and barrels as packages for containing the oil, in which aspect the imposition of a freight charge on the barrels while imposing none on the tank would plainly be an unjustly discriminative practice.

The correctness of this view is further apparent from a consideration of the case which sometimes occurs in practice, where the carrier owns

the truck, or frame and running gear of the car, and the shipper owns the tank which is placed upon the truck.

It can hardly be controverted that in such a case the tank is as much a package for carrying the oil as the barrels are packages for that purpose, and to charge the latter with freight and not the former would beyond question be unjust discrimination.

This being true, any argument that insists upon a different criterion of right conduct where both truck and tank belong to the shipper (in other words, where the shipper owns the car) is manifestly founded in technical considerations and not on substantial justice.

Turning now to the question of compensation made by the carrier to the shipper for the use of the latter's car, it is plain that if this compensation is more than a fair return on the cost of the car, treating that as an investment made by the shipper, this practically amounts to paying the latter a bonus for his business, a plain and flagrant discrimination against other shippers.

Compensation for the use of shippers' cars is usually made on the same basis as for the use of cars of other carriers, and is commonly at the rate of three-fourths of a cent a mile for every mile run by the car, whether loaded or empty.

As has been previously observed, it is a matter of comparatively little consequence what price is agreed on between carriers for the use of each other's cars, as it is in any case largely a matter of exchange. But not so as respects payments for cars of private shippers. The mode of fixing the compensation, on the basis of mileage, evidently puts it to a large extent into the carrier's power to determine what the aggregate compensation in any particular case shall be. The carrier thus has the power to discriminate, not only between shippers having cars of their own and those who are obliged to use the carrier's cars, but also between shippers who may both be provided with their own cars.

It should be said that the carriers in agreeing with shippers for the use of private cars over their lines usually provide that the car, after discharging the freight consigned by the shipper, may be used for the transportation of such return freight as the carrier may be able to secure. Delays occurring in waiting for return loads or from other circumstances of course prevent the car from making the full mileage which by rapid movement it would make. Such delays on the one hand, or on the other the constant and rapid movement of the cars, are matters which the carrier evidently has almost entirely under his own control, and by means of which he can easily manage to effect discrimination in ways that may often be difficult of detection.

Where the use of a special kind of car by the carrier is made very profitable to the owner, who is also a shipper, and where such use is in fact designed to operate as a discrimination in that shipper's favor, the effort is sometimes made to screen the real transaction from public scru-

tiny by the adoption of various devices of more or less subtilty and ingenuity.

A very instructive illustration was afforded in a case decided by the Commission during the past year.

The case, as bearing on this particular matter, was as follows: Certain large shippers of cattle from Chicago to New York, having their place of business in the last-named city, agreed with one of the lines of railway leading into New York from the West, to ship all their cattle over that line. To get this large business the railway company, from the first inception of its dealings with these shippers, appears to have made to them certain valuable concessions. As these concessions were met by similar concessions made by rival lines to their patrons, it became necessary, as it appears to have been thought, to look about for some other means of preserving the advantage which the shippers in question had generally been enjoying.

A corporation in form was then gotten up by the shippers, called Lackawanna Live Stock Express Company. The formality of issuing stock and allotting shares in this new company was complied with to a limited extent only. The whole concern evidently belonged to—in fact was identical with—the firm of shippers who organized it. The shippers in question, in the name and under the cover of this corporation, then agreed with the railroad company to supply it with a large number of cattle cars of a special make, designed to be used in shipping stock furnished by the Express Company. For the rental of these improved stock cars the railroad company agreed to pay the Express Company $\frac{3}{4}$ of a cent for every mile run by each of them, whether loaded or empty. In point of fact, although it was not provided for specially by contract, such extraordinary facilities and rights of way were given these cars over the line of the railroad as to enable them to make more than twice the average mileage of ordinary stock cars. In this particular case it was shown that the mileage paid on these cars, within two years, was more than enough to reimburse the owners for the original cost of them and all expenses of operating them meantime. The cars too still remained on hand for a continuation of the business. This was held to constitute an unjust discrimination against all other shippers.

The effect which arrangements of this kind may sometimes have upon the revenues of the railroad company—quite the opposite from what was contemplated—finds strong illustration in this case. The contract between the parties was for a term of five years, and the railroad bound itself to carry at the same rates as should from time to time prevail over other roads. The rates on cattle when the contract was made were sufficiently high to make the arrangement reasonably profitable to the carrier, in view of the large volume of traffic secured by it; but rates soon fell and the continuance of the business on the same footing beyond all doubt resulted in heavy loss to the carrier.

Such improvident management as this is not primarily and in itself a matter with which the act to regulate commerce undertakes to deal. So far, however, as this improvidence in contracts for the use of cars of private shippers is connected with undue and exclusive advantages given to certain parties, it is a matter affecting the public interest, and undoubtedly comes within the purview of the law forbidding unjust discriminations and undue preferences.

It is believed that there are other methods by which the use of private cars may be, and has been, made the means of conferring undue advantage on certain shippers.

But it would be tedious to enter into further details on this subject; and the matter treated of is left to the wisdom of Congress, should it see fit to act, without any special suggestion from the Commission.

CONNECTING LINES—THROUGH ROUTES AND RATES.

The question of transportation over connecting lines of railway becomes every year more important, and seems quite inadequately provided for by existing legislation.

The act to regulate commerce, as first enacted, provided that

In cases where passengers and freight pass over continuous lines or routes operated by more than one common carrier, and the several common carriers operating such lines or routes established joint tariffs of rates or fares or charges for such continuous lines or routes, copies of such joint tariffs shall * * * be filed with said Commission.

And the Commission was empowered to prescribe the measure of publicity which shall be given to such rates, fares, and charges, or to such part of them as it may deem it practicable for such common carriers to publish, and the places in which they shall be published.

The original act, however, failed to provide expressly against charging more or less than the rates specified in the joint schedules, or against making charges in the same without previous notice. This defect in the law has since been remedied; joint rates as published are now required to be adhered to, and changes in the same are forbidden except after ten days' notice to the Commission in case of an advance and three days' notice in case of a reduction. The Commission, under the power given it to prescribe the measure of publicity which common carriers shall give to joint schedules of rates, and to advances or reductions in the same, has directed they shall be published and posted in the same manner as is required by the act itself in respect to the charges of a single carrier.

The duty of connecting carriers having joint traffic arrangements over a continuous route in respect to the publication of their rates, and of changes in the same, is not one which the law itself directly imposes and requires. The measure of publicity to be given them is left to the Commission from time to time to prescribe.

The difference between the requirements in regard to publication of

joint rates and those of a single line, the one being absolute and the other being left to the discretion of the Commission, was doubtless intentionally made in the law. The idea probably was that carriers on the long through routes over which joint rates are made, being frequently competitive with carriers not subject to the provisions of the act to regulate commerce, might be unduly handicapped in the competition if they should be compelled, by publication of their charges, to disclose to their rivals information which would enable the latter to underbid for the business without themselves being under any obligation to make their own charges public.

The Commission in exercising the discretion given to it upon the subject has acted under the conviction that considerations of public interest in the full publicity of traffic charges should outweigh those above suggested, as to competition between carriers subject to the act on the one hand and those not included within its provisions on the other.

And it had by a general order required the same publicity to be given to joint schedules as the law requires to be given to the schedules of a single road. From the fact that no serious complaint has been made by carriers that their business has, by reason of the enforced publication of rates, been taken away by rivals who are not subject to its provisions, it may be inferred that the question of competition as affecting the publication of rates is not so important as was at one time supposed. In fact, the instances are but few where such competition exists, between carriers subject to the act and those not subject to it, as would render the publication of the rates of the former a source of danger to their business from the action of the latter.

The provisions which have been thus briefly discussed relate only to continuous lines or routes "where the several common carriers operating such lines or routes establish joint tariffs."

In other words, it is only where several connecting carriers have voluntarily associated themselves into a through route, and are doing a through business under some common arrangement, that these provisions apply concerning the publication of through rates.

But there is a vast amount of interstate traffic which either must pass, or would most naturally and cheaply pass, over various connecting lines which have no common understanding or business arrangement with each other for through billing or the making of joint through rates.

The carrier over an initial line, on which traffic originates, may at the end of its own line connect with two or more other carriers, over the lines of either of which the traffic may reach its destination.

No carrier can, in the absence of legislation, or of contract entered into by it, be compelled to assume the duties and responsibilities of a carrier beyond its own line. Its duty in the absence of legislation or contract is simply to carry safely to the end of its own line and there

deliver to a connecting carrier on the route to destination. In the absence of any instructions from the shipper as to the connecting carrier to whom delivery shall be made, the initial carrier may usually select the route by which it will forward the goods after they leave its own line, reasonable regard being had to the safety, expeditiousness, and general fitness of the route selected. Indeed, it is very common for the initial carrier, when receipting for goods destined for a point beyond its own lines, to stipulate expressly in the bill of lading that it may forward the goods by such connecting carrier as it may itself select.

Where the first carrier issues a bill of lading agreeing to carry goods through to a place of destination beyond its own line for a specified price for the whole transportation it will usually, though not necessarily, be the case that such first carrier is a party to some through traffic arrangement with another carrier or carriers whose lines reach the place of destination. Such an arrangement is apt to provide for the recognition by each connecting carrier of the bills of lading issued by any other carrier composing the route for the passage of loaded cars between the roads of the different carriers without breaking bulk, and for an entire through rate for transportation over the different roads which is less than the sum of the local rates over each.

But where all or any one of several carriers, whose lines form a route over which traffic must pass, refuse to unite in arrangements of the character above described, there seems to be no relief from the situation to be found in the terms of the "Act to regulate commerce," unless an unjust discrimination between connecting lines be involved.

Leaving the question of discrimination between connecting lines for the present out of view, it may be observed that a proper consideration of public interests and the needs of commerce frequently requires that through routes should be opened and through rates given over connecting lines, the separate owners of which refuse voluntarily to enter into arrangements to accommodate the public in that behalf.

It is sometimes suggested that the establishment of through routes, and the making of through rates over the lines of connecting but independent carriers, are matters for contract between the several carriers and can not properly be provided for by legislation.

The suggestion merits careful consideration. The question of through routes and through rates may be considered, (1) with reference to the compensation of the several carriers for the services rendered by them, respectively, in the through transportation; (2) with regard to the responsibility and duties of the several carriers toward the shipper, and (3) with reference to the responsibility and duties of the different carriers toward each other.

It is evident that where a through rate over several lines is to be established by public authority the same authority will also, in case the

parties interested can not agree, have on its hands, the further duty of apportioning the entire rate among those entitled.

This of course adds to the difficulties of the situation; but making a through rate over a route composed of several lines, and apportioning the same among the component members of the route, does in no wise differ in principle from the fixing of a rate for transportation over a single line. Conceding the right of the public to fix rates on a single line of road controlled and operated by a single company or carrier, the right to fix and apportion a through rate over connecting lines necessarily follows. Legally speaking, in fact, the fixing of the through rate is but the fixing separately of the rate for each carrier for so much of the transportation as is over its own line. In the absence of contract between the carriers, each one of them is bound only for safe carriage over its own line and safe delivery to the next carrier beyond; and each one may, in the absence of legislation, make its own reasonable charge for the service performed on its own line, regardless of the charges made by its predecessors or successors in the transportation.

The question of fixing and apportioning the through rate, so far as it is one of legislative authority, depends on the same principles and limitations as govern the rate-making power of the public on a single line of road. The question of the reasonableness of the rate or share to be received by each carrier for its own service may indeed be influenced by considerations which would not affect its local charges, but still the principle involved is the same.

In regard to the obligations towards shippers of the several carriers whose connecting lines, by virtue of public authority, are operated as a through route, they would seem to be the same and no other than they would be under the original practice of connecting carriers, where each is responsible only on its own road and for safe delivery to the next in the route to destination.

No one of the different carriers, merely because the public has made its road part of the through route, can thereby be any more responsible than it would otherwise be for loss, damage, wrong delivery, or other breach of duty on the part of some other carrier in the route.

So far as the safe transportation and right delivery of freight is concerned, the financial responsibility of any of the connecting carriers on such a route would hardly seem to be of so much importance to the others as is sometimes supposed, since no one of the carriers can be held liable for the default of its associates unless by contract it chooses to make itself so liable. The solvency of any carrier in the route is in this aspect more a question for the shipper than for other carriers.

But the question of the responsibilities and duties of the several connecting carriers towards each other involves greater difficulties.

One of these difficulties consists in the necessity of a free interchange of cars between roads operated as a through route. A carrier by rail-road, it has been held in some jurisdictions, is bound as such to accept

and to safely haul the cars of other carriers when tendered to it, either loaded or empty, supposing of course the cars to be themselves in fit and safe condition. Legislation explicitly imposing this duty on railways is not uncommon, and it is difficult to see wherein it is objectionable.

But when it is proposed, in furtherance of the design of establishing through routes by public authority, to require the initial carrier into whose car the freight may be loaded to permit that car—or, it may be, a large number of its cars—to pass off its own road on to another, where they may be unreasonably detained or carelessly or wantonly injured without the possibility of redress to the owner, the proposition would seem to involve serious embarrassments.

Moreover, each carrier in a through route may be vitally interested in the solvency and pecuniary responsibility of its associates, so far as it is customary or necessary for any of the carriers to act as well for the others as for itself in the collection of the entire transportation charges.

It perhaps seldom or never happens at this day, when traffic passes on a through route over roads belonging to different carriers, that each carrier collects directly from the shipper its own share of the transportation charges. As a general thing the entire amount is paid either to the initial carrier to whom the freight is delivered by the consignor, or to the terminal carrier by whom it is delivered to the consignee. The party to whom the payment is thus made is bound of course to account to its associates for their share thereof.

It may sometimes happen that the amount accumulated in the hands of one of the members of a through route which rightfully belongs to the others is very considerable, and the interest which all have in the solvency and integrity of that one is apparent. Practically the one who collects the entire traffic charge is the financial agent of the others in that behalf. Where through routes are voluntarily formed by connecting carriers all, by the very fact of association under the usual methods of doing business, agree upon the employment of this agent. But where a through route is proposed to be formed, not by voluntary association, but by public authority, it becomes a question how far such authority is competent to compel some carriers to accept the agency of others and intrust the collection of their earnings to parties in whose selection they have no voice and over whose conduct they have no control.

In answer to the suggestion here made as to the obstacles in the way of opening through routes by public authority, it may be said that in the practical management of such routes, where they have been formed by voluntary associations, no serious difficulties appear to have arisen from the sources referred to.

It may be well supposed, too, that whatever official or bureau might be charged with the duty of establishing through routes would be clothed with sufficient discretion in the premises to make regulations looking

to the protection of every carrier in the line against loss or damage from the action of its associates. The number of cars to be furnished by each member of the route, the allowance to be made by each for the use of the other's cars, demurrage for improper detention, and other similar matters relating to the operation of a through route, might thus be provided for. It can hardly be conceded that the due interchange of traffic and of cars at through rates over connecting lines, a practice so well recognized and universally prevalent, can not be enforced by public authority when the public interest requires it and the carriers themselves refuse voluntarily to adopt the practice.

In regard to the payment of balances on account of freight moneys received for connecting lines, to which reference has been made as one of the difficulties in the way of compulsory through routing, it may be observed that such balances for a reasonable period back are, by the current of modern authorities, held to be a first lien not only on the earnings, but frequently on the proceeds of sale of the property of the company from which they are due. This principle, supplemented if need be by legislation to the same end, would seem to afford sufficient protection to each carrier in a route from loss arising from the insolvency of its associates.

But even if it be concluded that the proper public authority may compel the opening of through routes over independent lines of railway, the question must often practically arise, in what cases and to what extent has the Congress of the United States the power to legislate with that object in view. That existing legislation of Congress does not cover the subject, or even do more than barely touch upon it, may be conceded. But it does not follow that Congress has exhausted its powers in this respect.

The question of the power of Congress may perhaps be clearly presented by a hypothetical case: Suppose a quantity of grain is shipped from Chicago by water, marked and consigned to "New York via Buffalo and New York Central Railroad." The vessel which received the grain, however, only undertakes to carry it to Buffalo, and gives a bill of lading accordingly, agreeing to transport to that point and there deliver to the railroad company. The New York Central Road lies entirely within the limits of a single State, and the transportation from Buffalo to New York would be entirely within the same limits. Now, is the railroad company, in respect to its obligations to receive that grain from the vessel at Buffalo and transport it to New York, engaged in "commerce between the several States," or in commerce within the State only? If the latter, Congress confessedly has no jurisdiction whatever over it. Whether the railroad company shall accept the shipment at all, and the terms of transportation, must, if this be the case, depend purely on the will of the company itself, or on the law or regulations of the State, if any such apply to the case. What is the result?

Manifestly that the railroad company, or the State of New York may absolutely prohibit the introduction into that State of the products of other States by way of the port of Buffalo. Such a conclusion seems repugnant to the first principles on which the Federal Constitution is founded. That instrument was in large measure suggested by the commercial troubles growing out of the imposition by some of the States of customs duties on imports from other States; and to admit that any State, or any of its citizens or corporations, can by any means exclude the products of other States from its territory is to concede the Constitution to that extent to be a failure.

Of course if the shipment was originally made from Chicago to Buffalo only to a consignee there, without any definite intention of having it proceed to an ultimate destination further on, then on arrival at Buffalo the shipment would lose its character of interstate traffic; and should it be subsequently sent to New York it would go as intrastate traffic subject only to State regulations.

But the mere fact that the shipment is not to be strictly continuous, or on a through bill of lading or under a "common control management or arrangement" of connecting carriers, can in no wise affect its character as interstate commerce, if in point of fact its origin is in one State and the terminus of the transit on which it is started is in another State. And where the traffic is interstate in its character all agencies participating in it are subject, as to it, to the regulation of Congress. These views not only seem consonant to reason, but they find very clear sanction and support from an authority which in respect to the powers of Congress under the Constitution is final and conclusive—the Supreme Court of the United States.

Thus, in the case of *The Daniel Ball* (10 Wall., 557) it was said that—

Whenever a commodity has begun to move as an article of trade from one State to another, commerce in that commodity between the States has commenced. The fact that several different and independent agencies are employed in transporting the commodity, some acting in one State and some acting through two or more States, does in no respect affect the character of the transaction. To the extent to which each agency acts in that transportation it is subject to the regulation of Congress.

And if the authority of Congress

does not extend to an agency in such commerce when that agency is confined within the limits of a single State, its entire authority over interstate commerce may be defeated. Several agencies combining, each taking up the commodity transported at the boundary line at one end of the State and leaving it at the boundary line at the other end, the Federal jurisdiction would be entirely ousted and the constitutional provision would become a dead letter.

From this it would appear that if traffic originates in one State and is destined to another, it belongs to interstate commerce and the means by which it is transported to its place of destination is immaterial, as is also the question whether the transportation is to be continuous and uninterrupted across State lines, or whether the article carried is to be transported from one vehicle or line of transportation to another at the

State line or in the interior of a State. It is still an article of interstate commerce, and every agency participating therein is, to that extent subject to the regulation of Congress.

It is sometimes true, as said in another case (*Coe vs. Errol*, 116 U. S., 517), that "the point of time when State jurisdiction over the commodities of commerce begins and ends is not an easy matter to define." So long as their exportation from the State "is a matter altogether *in fieri* and not at all a fixed and certain thing," the Federal jurisdiction does not attach. But this "does not present the predicament of goods in course of transportation through a State, though detained for a time within the State. * * * Such goods are already in the course of commercial transportation and are clearly under the protection of the Constitution."

It is perhaps safe to say that wherever commerce is under the protection of the Constitution for the purpose of preventing the imposition of burdens on it by State authority, under the guise of controlling State agencies engaged in such commerce, the circumstances will authorize Congress to impose regulations upon these agencies in respect to such commerce.

The illustration of the New York Central Railroad has been given because it seems, from its peculiar situation and importance in commerce between the States, to present in an unusually forcible manner both the necessity and the constitutional right of Congress to subject it to all proper regulations in respect to the interstate business tendered to or accepted by it.

But the same principles would apply to determine the power of Congress over any other road exclusively in any other State, which is adapted by its location, and is held out by its management, as seeking to participate in traffic which, within the definition above given, is interstate in its character.

In fact it may be said that where the owners of a line of railway, and the State under whose authority it is built, have so located it as to make it a fit and suitable highway for interstate commerce, they must have done so with the anticipation that traffic between the States would necessarily pass over it. In other words it must be presumed that it is dedicated, in part at least, to the purposes of such traffic.

This being the case, does it not necessarily follow that it is subject to the control of Congress, so far as may be proper for the regulation of the interstate commerce in which it participates?

As was said by Chief Justice Waite, speaking for the court in the case of *Munn v. Illinois* (94 U. S., 113):

Property does become clothed with a public interest when used in a manner to make it of public consequence and affect the community at large.

When, therefore, one devotes his property to a use in which the public has an interest, he in effect grants to the public an interest in that use, and must submit to be controlled by the public to the extent of the interest he has thus created.

So long as the principle thus announced maintains its place in American jurisprudence, the right of public regulation of railways, within limits perhaps not yet accurately defined, can not admit of question. Some question may arise whether in any particular case this right is in the State or in the national Government. But the public must exercise its control primarily by legislation. And when the owners of railway property devote it to a use in which the public of the United States at large, and not merely the public as represented by a single State, have an interest, that is to say, when they devote it to interstate commerce, it is evidently to the control of the public of the United States, that is, to the regulation of Congress, that they must expect to submit.

It is not of course asserted that existing legislation authorizes this Commission to establish through routes or fix through rates in the public interest. But the wording of the last clause of the third section of the act to regulate commerce has led the Commission to make a decision, under the special facts of a case presented to it, which has practically resulted in the establishment of a new through route, or rather the reopening of an old one.

The language of the clause referred to, so far as material, is that—

Every common carrier, subject to the provisions of this act, shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding, and delivering of passengers and property to and from their several lines, and those connecting therewith, and shall not discriminate in their rates and charges between such connecting lines.

The facts of the case referred to, so far as necessary to be mentioned in this connection, were as follows: The New York and New England Railroad Company, whose line extends east and west through the southern part of New England, connects with the New York and Northern Railroad at Brewster, in the State of New York. The New York and New England and the New York and Northern together form a very convenient, and in the public interest desirable, route for through business between points on the line of the former and New York City, the terminus of the latter. By agreement between the carriers over these two roads they were in fact for some time used in connection with each other for the purpose of such a through route, through billing being effected, and through rates given according to the usual custom in such cases, between the city of New York and the principal manufacturing towns of Connecticut and Massachusetts. The New York and New England Company, however, having made arrangements for a connection with New York City by the route over the Housatonic Railroad and the Sound, terminated the business connection above mentioned with the New York and Northern, and entered into substantially the same arrangements with the Housatonic Company. The New York and Northern, having solicited the New York and New England in vain for a restoration

of the former relations between them, finally made complaint before the Commission that the latter company by its exclusive through traffic and through rating arrangement with the Housatonic Company discriminated in its rates and charges between connecting lines, and hence violated the third section of the act to regulate commerce.

The complaint seemed to the Commission, after a full hearing and investigation, to be well founded, and an order was entered directing the New York and New England to cease and desist from the discrimination complained of.

The investigation made by the Commission in this case disclosed the fact that the business and manufacturing communities along the line of the New York and New England road were deeply interested in the reopening of the route via the New York and Northern Road to the city of New York. Yet so far as the Commission has been able to discover, there is no provision of the act to regulate commerce authorizing them, on the complaint of shippers or representatives of the public, to order the establishment of a through route and through rates, no matter how plain may be the utility or even the public need of such a route.

In several cases which have come before the Commission they have felt the lack of authority under the act to make such order as the public interest seemed to require in the matter of through routing, and it is only in the New York and Northern case above referred to that the circumstances of the case, appearing as they did to involve an unjust discrimination between connecting lines, have enabled the Commission to act.

The difficulties of the situation are well illustrated by a case which has recently been before the Commission involving the rate on peaches from points in the State of Delaware to the city of Boston.

In transit to destination the peaches had to pass over three independent connecting lines of railway operated under a common arrangement for the transportation of the fruit from Delaware points to Boston. Complaint was made to the Commission by the Boston Fruit and Produce Exchange that the transportation charges on peaches were too high. The Commission, after a full investigation, to which all the railroad companies participating in the traffic were parties, came to the conclusion that the charges from Delaware points to Boston were, as a whole, too high, and ordered a reduction. The Commission, however, did not undertake to fix the proportion of the entire rate which each carrier engaged in the transportation should receive. A controversy on this point then arose between the several carriers interested, one of them claiming that under the circumstances it was entitled to more than a pro rata share of the entire charge, based on mileage, the others resisting this claim. The carriers are understood also to claim that, in case of being required to accept a share of the rate unsatisfactory to themselves, they have a right to abandon the arrangement under which through shipments are now made, a step which would practically destroy the business. The

necessity of meeting this difficulty by an amendment to the law would seem to be apparent.

An attentive consideration of the terms of the act to regulate commerce, as well as the conditions which are known to have brought about its enactment, can not but produce the conviction that the principal object of the law was the regulation of the carriers, in the interest of justice towards those having occasion to use their facilities, rather than to enlarge the rights and remedies of the carriers as between themselves. And yet, so far as the matter of through routing and through rates is concerned, it is only indirectly and by means of a provision adopted apparently with a different view that the needs of the public can in any case be met by the action of the Commission, while in a very large number of cases there would seem, as the law now stands, to be absolutely no means, except what the carriers choose to adopt, of opening up such new routes via existing lines as the convenience of the public and the needs of a growing commerce justly demand.

The general conviction of the importance of this subject is well shown by provisions concerning through routes and through rates in the constitutions and statutes of many of our States, as well as in England. Some of the State enactments are exceedingly explicit and furnish more or less complete machinery for the establishment by public authority of through routes and through rates over connecting lines. The laws of the States bearing on the question may be found in Appendix E of the fourth annual report of the Commission. Some reference in this place to a few of them may not be amiss by way of illustration.

In Georgia, for example, it is provided that—

All railroad companies in this State shall, at the terminus or any intermediate point, be required to switch off and deliver to the connecting road having the same gauge, in the yard of the latter, all cars passing over their lines, or any portion of the same containing goods or freights consigned * * * by any route at the option of the shipper, according to customary or published rates to any point over or beyond such connecting road. * * *

It is also provided that—

All railroad companies shall, at the terminus or any intermediate point, be required to receive from the connecting road having the same gauge, when offered, all cars containing goods or freight consigned to any point on the road to which the same is offered, and to transport the said cars to their destination with reasonable diligence. * * *

And again—

No railroad company shall discriminate in its rates or tariffs of freight in favor of any line or route connected with it as against any other line or route, nor when a part of its own line is sought to be run in connection with any other route shall such company discriminate against such connecting line, or in favor of the balance of its own line, but shall have the same rates for all, and shall afford the usual and like customary facilities for interchange of freight to patrons of each and all routes or lines alike. * * *

In the Iowa law of April 15, 1888, which was modeled largely after the "act to regulate commerce," was the following:

SEC. 4. * * * All common carriers subject to the provisions of this act shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding, and switching of cars, and the receiving, forwarding, and delivering of passengers and property to and from their several lines, and to and from other lines and places connected therewith, and shall not discriminate in their accommodations, rates, and charges between such connecting lines. And any common carrier may be required to switch and transfer cars for another for the purpose of being loaded or unloaded, upon such terms and conditions as may be prescribed by the board of railroad commissioners.

The similarity of this provision to that under which the New York and Northern case was decided by the Commission, as above mentioned, is very noticeable. Yet it was evidently felt that its terms were inadequate to meet many cases where the public interests might demand the establishment of through routes and through rates. Accordingly in April, 1890, it was further enacted by the legislature of Iowa that—

* * * * *
SEC. 2. All railway companies doing business in this State shall, upon the demand of any person or persons interested, establish reasonable joint through rates for the transportation of freight between points on their respective lines within this State, and shall receive and transport freight and cars over such route or routes as the shipper shall direct. Carload lots shall be transferred without unloading from the cars in which such shipments were first made, unless such unloading in other cars shall be done without charge therefor to the shipper or receiver of such carload lots and such transfer be made without unreasonable delay, and less than carload lots shall be transferred into the connecting railway's cars at cost, which shall be included in and made a part of the joint rate adopted by such railway companies or established as provided by this act.

When shipments of freight to be transported between different points within this State are required to be carried by two or more railway companies operating connective lines, such railway companies shall transport the same at reasonable through rates, and shall at all times give the same facilities and accommodations to local or State traffic as they give to interstate traffic over their lines of road.

SEC. 3. In the event that said railway companies fail to establish through joint rates, or fail to establish and charge reasonable rates for such through shipments, it shall be the duty of the board of railroad commissioners, and they are hereby directed, upon the application of any person or persons interested, to establish joint rates for the shipment of freight and cars over two or more connecting lines of railroad in this State, and in the making of such rates and in changing or revising the same, they shall be governed, as near as may be, by all the provisions of chapter 28 of the acts of the twenty-second general assembly, and shall take into consideration the average of rates charged by said railway companies for shipments within this State for like distances over their respective lines, and rates charged by the railway companies operating such connecting lines for joint interstate shipments for like distances. The rates established by the board of railroad commissioners shall go into effect within ten days after the same are promulgated by said board, and from and after that time the schedule of such rates shall be *prima facie* evidence in all of the courts of this State that the [rates so fixed are just and reasonable maximum rates for the] joint transportation of freight and cars upon the railroads for which such schedules have been fixed.

SEC. 4. Before the promulgation of such rates, as provided in section 3 of this act, the board of railroad commissioners shall notify the railroad companies interested in the schedule of joint rates fixed by them; and they shall give said railroad companies a reasonable time thereafter to agree upon a division of the charges provided for in such schedule, and in the event of the failure of said railroad companies to agree upon a division and to notify the board of such agreement, the board of railroad commissioners shall, after a hearing of the companies interested, decide the same, taking into consideration the value of terminal facilities and all the circumstances of the haul, and the division so determined by the board shall, in all controversies or suits between the railroad companies interested, be *prima facie* evidence of a just and reasonable division of such charges.

In England, to whose legislation many of the American statutes for the regulation of railway traffic, including several of the features of the act to regulate commerce, are quite closely assimilated, the establishment of through routes and through rates by public authority has recently been fully provided for.

The act, passed in 1888, contemplates public action on the application either of connecting carriers or of any person interested in the through traffic; and it is provided that—

If an objection be made to the granting of the rate or to the route the (railroad) commissioners shall consider whether the granting of a rate is a due and reasonable facility in the interest of the public, and whether, having regard to circumstances, the route proposed is a reasonable route, and shall allow or refuse the rate accordingly, or fix such other rate as may seem to the commissioners just and reasonable.

Provision is also made for the apportionment of the through rate by the commissioners, and they are directed in making the apportionment to “take into consideration all the circumstances of the case, including any special expense incurred in respect of the construction, maintenance, or working of the route, or any part of the route, as well as any special charges which any company may have been entitled to make in respect thereof.” Other safeguards are also provided in the interests of the carriers whose lines constitute the proposed through route.

In England, where a few great systems operate, each for the most part in a field exclusively its own, there can hardly be the same necessity for through routing over independent lines as there is in the United States, where it often happens that a certain section of country is interlaced by the tracks of different and hostile companies. Under the latter condition of things it may very likely be the case that the shortest, most expeditious, and in all respects the best route for commerce between certain cities, would be over two or more independent connecting roads; and yet the policy of one or more of the carriers, regardless of the public interest, may keep this route entirely closed to traffic in the effort to control the channels of trade in their own interests alone.

And when it is remembered that a vast amount, perhaps it may be said much the greater proportion, of the traffic thus affected is interstate in its character, the inadequacy of mere State action, if not indeed its unconstitutionality, is apparent; and the subject is seen to be one well worthy of the attention of the national legislature.

BILLS OF LADING.

It would seem not unreasonable that the carriers' charges for transportation of freight should have some reference to the degree of risk assumed in undertaking the carriage.

The two elements of risk and cost of service are, in the estimation of many persons, those which should be mainly controlling in the establishment of traffic charges.

To those who have studied the subject in its practical bearings the fallacy of such an opinion is apparent, as it is well settled that classification, or the system of fixing relative charges on different commodities of commerce, neither is, nor consistently with the public interest can be, based upon cost of service and risk alone.

Many other elements enter into the question of the amount to be charged for the carriage of any particular commodity or class of freight. These it is not proposed here to discuss; the object in alluding to them being merely to draw attention to the fact that in determining practically upon the proper classification of an article, or the rate charged for carrying it, the mere question of the carrier's risk must not be given undue prominence. Risk, nevertheless, remains an element, and in some cases an important element, in adjusting the charge.

In the classification sheets of railroads will usually be found a number of cases where the same article is placed in a much lower class, if carried at owner's risk, than if carried at the risk of the carrier; and the lower classification implies that a lower charge for the transportation is in that case imposed.

It is generally understood that, in the absence of an agreement to the contrary between the carrier and the shipper, the risk is in most cases and in most contingencies upon the former. Nor is the risk thus imposed by the law applicable only in those cases where loss or injury to the property occurs through the negligence, default, or wrong conduct of the carrier or its agents. The carrier's risk is unusual and exceptional in its character, and applies in case of any loss or injury however occurring, with a few tolerably well defined exceptions, no matter how great the care, prudence, and skill it may have exercised, or how guiltless of any fault whatever it may have been. In other words, the carrier becomes an insurer, with the exceptions above suggested, of the safe transportation of the property intrusted to its care. Nor does this onerous risk attach during the period of actual transportation only. It is probably safe to say that it begins as soon as any article is delivered into the custody and control of the carrier for a transit to be commenced either forthwith or in the usual course of the carrier's business, without any further order or directions from the shipper.

The period when this special and extraordinary risk of insurer ends is a matter upon which the authorities are not so well agreed; but in

most cases, and in most jurisdictions, the risk remains on the carrier for a time at least, after the actual transit is terminated. It may thus often happen that the carrier will be liable for the loss or destruction of the property in its depot or warehouse by an accidental fire, robbery, or other cause not in any way due to its neglect, before the actual transit has commenced, or even before, in the usual course of business, it could be begun. It may also in some cases be liable where the property, under similar circumstances, is lost or destroyed after the actual transit is at an end and the property has been placed in the carrier's warehouse awaiting delivery. The liability in the latter case depends somewhat on the extent of the carrier's duty in connection with the delivery of the property to the consignee. This is a matter it is not proposed to discuss. It may be remarked, however, that the carrier's duty generally includes the right delivery of the property, or at least due effort to make such delivery according to the usual course of business; and that its risk usually remains until that duty is discharged. The delivery must be either to the consignee, or to a connecting carrier to be forwarded, according to the circumstances of the case or the contract between the parties.

Since by the course of modern adjudications it has been quite well settled that the carrier can be relieved of the risk which the common law thus imposes by agreement or contract with the shipper, and not otherwise, it has become the general practice of carriers to prepare their shipping contracts with that object in view.

These contracts are usually embodied in the receipts or *bills of lading*, which the carrier gives the shipper when the property is received by it for transportation.

The *bill of lading*, as the term implies, was originally but a "bili" or statement of what was loaded on the vessel or vehicle for transportation, and constituted both the carrier's receipt for the goods and the contract to carry and deliver them to consignee. The modern bill of lading, however, in addition to this, contains numerous conditions subject to which, as it is therein stated, the transportation is to be undertaken. These conditions are the means by which it is sought to limit the carrier's common-law liability.

Before entering upon any consideration of the bill of lading, with its conditions, as evidencing the rights of the parties arising out of the delivery and acceptance of property for shipment, it may be well to examine that instrument in another of its aspects, which has recently attracted much attention in commercial circles—among carriers as well as among shippers.

The character of the bill of lading to which reference is now made is that of a receipt for property, since the instrument purports on its face to be a receipt, as well as a contract for carriage.

It is a well settled rule of commercial law that the transfer and delivery of a bill of lading is a symbolic transfer and delivery of the property for which it is a receipt. And thus by means of the bill of lading the property can be, and often is, either sold, or, as is more commonly the case, pledged as security for money advanced upon the faith of it. The transferee of the bill of lading will, under these circumstances, be entitled to delivery of the property from the carrier, especially if the bill has been drawn for delivery to the order of the consignee and by him indorsed or transferred over to another.

On the other hand the carrier, being bound to make delivery to the rightful holder of the bill of lading as above stated, can not usually be compelled to deliver the property except on production of that instrument.

These qualities and features of bills of lading, and the use made of them in commercial transactions as security for advancements of money on discounts of drafts and notes, assimilate them somewhat to that class of commercial paper generally known as negotiable instruments.

They are not, however, negotiable in the legal signification of that word, implying the right of any bona fide holder, for value, to the property referred to in them.

Possession even by a holder in perfect good faith of a bill of lading lost or stolen from the true owner would not, it is supposed, entitle such holder to delivery of the property receipted for therein; nor, probably, would the carrier be justified in making delivery of such a holder.

This consideration sufficiently distinguished bills of lading from strictly negotiable instruments.

But in some of the States the doctrine of estoppel, as it is termed in the law, has been under certain circumstances so applied to the documents issued by shipping agents of carriers, purporting the receipt of goods for transportation, as still further to impress them with the quality of negotiability. It may happen that by carelessness, mistake, or fraudulent collusion between carrier and shipper a receipt or bill of lading may be issued for property which in point of fact has not been received by the carrier at all, or which, if received, is less in quantity or inferior in quality to that mentioned in the receipt.

This erroneous or fraudulent bill of lading may in the usual course of business come into the hands of some person who, in good faith and relying on the truthfulness and genuineness of the instrument, advances money upon the security supposed to be afforded by its possession.

Thus an innocent third party is induced by the representations of the instrument to take such action as will subject him to serious loss, if those representations may afterwards be controverted by the party against whom they purport to establish a right. Under these circumstances the latter party may sometimes be estopped from denying the truth of such representation as against the party misled by them, even though in point of fact they do not really express the truth.

Where the carrier is an individual or natural person and himself personally issues, or is cognizant of the issuance of a fraudulent bill of lading, it is conceded by all the authorities that he is estopped, as against the bona fide transferee for value of the bill, from denying the actual receipt by him of the property called for by it. And the carrier may in such case be held liable by such transferee for the value of the property mentioned in the bill, although in fact it was never received by the former at all.

In the case of railroad bills of lading, the actual and responsible carrier, being a corporation, can not in the nature of things personally participate in or be cognizant of the issuance of false or fraudulent bills.

The question of difficulty which here arises is, how far is the railroad company responsible for the acts and representations of its shipping agents in this particular?

It is admitted that the depot or station agent is the authorized agent of the railroad company for the purpose of issuing bills of lading. But it must also be conceded that it is not within the scope of his authority, either express or implied, to issue such instruments except for property actually received for shipment.

In one class of decisions it is held that this limitation of the agent's authority should not be allowed so to operate as to work detriment to parties dealing in good faith in bills of lading issued by him. The agent's authority to issue bills of lading, it is true, is limited to cases where property, has actually been delivered to him for shipment, but the very fact of issuing the bill is an assertion by him of the delivery of the property, and of the consequent existence of that state of things under which his power may lawfully be exercised. The delivery of the property, it is also said, is a fact peculiarly within the knowledge of the agent, and further inquiry concerning it from the agent would be useless, when he has already by his act affirmed that the property has been delivered.

The railway company, it is further said, in supplying its agents with blank forms of bills of lading for use in shipments, must be held charged with knowledge of that common usage of business in pursuance of which these instruments are transferred from man to man, in commercial transactions, as evidences of title to property or security for loans and advancements. The familiar principle should therefore apply, so these cases affirm, that where one of two innocent parties must suffer by the wrongful act or conduct of a third, that one who has enabled the third party to do the wrong must be the sufferer. Hence in this class of cases the railroad company is held liable to bona fide transferees for value of false and fraudulent bills of lading issued by its station agents.

In the leading commercial State of New York, where this doctrine pre-

vails, it is said by the courts that if the carrier desires to avoid the liability which may thus be cast upon it by the issuance of false bills of lading, it must stamp upon them, or insert in them, the words "not negotiable," as provided by a statute of the State, to limit the effect of a transfer of such instruments. The bills of lading of many of the railway companies now contain these words.

In some of the States legislation has been enacted expressly giving to bills of lading the effect which, by the course of decisions above referred to, they have been held to possess, but which in other cases has been denied to them.

In the Federal courts the negotiability of bills of lading, to the extent of binding the carrier when fraudulently issued by its agents, has not been sustained; or, to speak more accurately, it has been uniformly held in those tribunals, under the lead of the Supreme Court, that the doctrine of estoppel is not applicable against the railroad company in such cases. The agent, it is said, has no authority, either express or implied, to issue bills of lading, except upon the receipt of property for shipment. It is not within the scope of his agency to issue them under any other circumstances, and the carrier can not be bound by the acts or representations of the agent beyond the scope of his express or implied authority. Several of the State courts agree with the Federal courts in this view, which it may probably be said is sanctioned by the weight of authority, if not of reason.

Legislation has been sought from Congress to make the recitals in railway bills of lading, as to the receipt of property for shipment, conclusive against the company, in favor of bona fide transferees for value, where the bill of lading purports to contract for a shipment which would be subject to the regulative jurisdiction of Congress. A bill having this object in view passed the House of Representatives a few years ago, but failed of passage in the Senate. The principal objection urged against it was the imminent danger in which it would place the railway companies of loss from the unauthorized or fraudulent acts of any one of the vast number of shipping agents they are obliged to employ. Such agents must, to accommodate the public, be located at many small places where the business could not possibly justify the employment of a man of such capacity and prudence as might be relied on to save him from mistakes, or from the fraudulent artifices of shippers in issuing bills of lading. But whatever the business capacity of the agent, or the care exercised by the company in his employment, his fraudulent acts, it was said, should not be allowed to subject his employer to liability in damages, but should be punished, as are other infractions of the criminal law, in the State where they occur.

Returning now to the subject of limitation by contract of the carriers'

liability it is to be said that the shipping contract is usually, although not always or necessarily, evidenced and contained in the bill of lading.

This is generally an *ex parte* instrument prepared by the carrier and signed only by the carrier's agent, not by the shipper, and is delivered to the latter by the agent. It is not necessary, however, that the shipper should sign it in order to be bound by it, provided he accepts it and assents to its terms. But the acceptance of the instrument by the shipper without objection is, by the decisions of most of the courts, held to raise a conclusive presumption of his assent to its terms. Theoretically speaking, the shipper is not obliged to accept or assent to a shipping contract limiting the carrier's common law liability. It is the legal duty of the latter to accept for transportation any kind of property of which it holds itself out to the public as a carrier, and to carry the same for a reasonable compensation without any other limitation on its liability than the law itself provides.

It is also true in theory that the contract limiting the carrier's common law liability must be based upon some valuable consideration to the shipper. This consideration may consist in the carrier's undertaking and being responsible for the transportation of the property beyond its own line, or in reduced rates of freight or other circumstances. But it appears to be the doctrine of most of the courts, including the Supreme Court of the United States, that an adequate consideration for the contract of exemption evidenced in the bill of lading will be presumed.

Thus, in a case where it was urged in argument that there was no consideration for the carrier's exemption from liability stipulated for in the bill of lading, the Supreme Court said that "there is no evidence that a consideration was not given for the stipulation. The company probably had rates of charges proportioned to the risks they assumed from the nature of the goods carried, and the exception of losses by fire must necessarily have affected the compensation demanded. Be this as it may the consideration expressed was sufficient to support the entire contract made. But the question of what is reasonable compensation under the circumstances is usually a matter of so much uncertainty, and the actual charge made by the carrier for his services under the common law risks is usually so high—being often wholly prohibitory of the transportation in fact—that practically the shipper is for the most part obliged to accept the terms which the carrier offers. It is also insisted by the shipping interests that the reduction of rates in consideration of the exempting clauses of the bill of lading is more of a pretense than a reality, and there are undoubtedly cases where no reduction of rates has followed upon the introduction of shipping bills containing these clauses. Great dissatisfaction and complaints among shippers have hence resulted.

The practical compulsion under which the shipper rests, to accept these terms and submit to the conditions of the bill of lading limiting

the carrier's liability, may be more clearly appreciated when it is remembered that the latter may require payment of its charges in advance before undertaking the transportation. Or if the carrier choose to waive this right, it may still avail itself of its lien on the property transported to hold it after the transit is completed until the charges for its services are fully paid. The shipper must therefore either accept the carrier's conditions or pay under protest such charge as it may make for assuming the common law risks. Having made this payment he can only recover it back by legal proceedings, in which the whole intricate question of reasonable rates and classification must come before the court. The result is so doubtful, and the course to be pursued so troublesome and expensive, as to make it practically out of the question. The relative circumstances of the shippers and carriers in this particular are evidently such as to place the former at a decided disadvantage, and to enable the latter practically to dictate and control the extent of their risks, their control over the rates remaining meantime practically the same.

The terms and conditions contained in bills of lading are quite diverse; and the adjudications of the rights of parties, even when they depend on the same provisions of shipping contracts and the same circumstances of loss or damage, are very conflicting in the different tribunals of the country. To examine in detail these diverse conditions and provisions, and the conflicting decisions upon them, would be out of place in this connection, yet attention may be called to a few of them. For example, in most jurisdictions it is held that a shipper having accepted a bill of lading is absolutely bound by its terms, and can not prove by parol evidence that he did not understand or assent to its provisions. But in at least one leading commercial State the shipper may introduce parol evidence to show that he is not bound by the conditions of the instrument.

Where the transit of a shipment from starting point to destination must be over two or more connecting lines of road it is generally agreed that the initial carrier who receives the freight is not liable beyond its own line, unless it contracts for the transportation all the way through. But when the contract to this effect is not expressly set forth in the bill of lading or otherwise, the question arises how far such a contract may be implied from the mere reception by the first carrier of property consigned to a point beyond its own line.

In the Federal courts, and in many of the State courts, it is held that no such contract can be implied from this circumstance, but in the courts of several important States the reverse is held. Consequently, the rights of a shipper against the carrier to whom he delivers goods for shipment from Chicago to New York may be differently adjudicated under the same state of facts, according as he seeks redress in the State courts of Illinois or in the Federal courts of concurrent jurisdiction.

Or, by virtue of the rule that rights of litigants are controlled by the law of the place of contract, it may happen that the validity of a shipper's claim against an initial carrier will depend on whether the carriage was begun in one State or another, regardless of the forum in which the litigation may be conducted.

Again, in most jurisdictions, including the Federal courts, it is held that contracts with a carrier to exempt it from liability for loss or damage arising from the negligence of its employes are void as being against public policy. But in some important commercial States such contracts, when specifically expressed to that effect, are upheld by the courts.

Contracts for exemption from liability of the carrier for loss or damage occurring from certain specified causes strictly without fault of its agents, servants, or employes—as, for instance, by an accidental fire—are usually held valid. But assuming it to be proved that the loss was due to an excepted cause, the question arises then, is the carrier, in order to escape responsibility, to further prove that it was not guilty of negligence, or is the burden of proving negligence of the carrier then shifted to the shipper. Upon this question the rights of parties may often depend, and there is a conflict of decisions concerning it.

In the Federal courts, and in many of the State courts, it is held that while a carrier may not by contract exonerate itself entirely from liability for loss or damage arising from the negligence of its servants, it may yet limit the amount of its liability.

In other jurisdictions this distinction is denied, and carriers' contracts limiting their liability to an amount less than the true value of the property are, where the loss or damage occurs from the negligence of the carriers, held to be void.

Again, as regards the carrier's duty in connection with the delivery of property after the transit is ended there is a conflict of authority. In Massachusetts, for instance, and perhaps in other States, it is held that the liability of the railroad company, as a carrier, is terminated immediately upon unloading the goods from the cars into the depot, and that the subsequent liability is that of warehousemen only. But the majority of cases hold that the carrier's risk continues, even after the goods are placed in the depot, till a reasonable time has been given the consignee to come and take them away; and it seems to be the doctrine of some cases that the carrier must, if possible, notify the consignee of the arrival of the property in order to terminate the strict liability of an insurer.

All these conflicting decisions may affect traffic of an interstate character as well as strictly State traffic.

Without going into further details or illustrations, it may be said that the present status of the question of the rights of parties, under bills of lading or other shipping contracts, is unsatisfactory both to shippers and to carriers. The element of uncertainty surrounding it is unfavor-

able to commerce, and uniformity in the terms of shipping contracts and in the rights of parties arising out of them in all jurisdictions is certainly to be desired.

A "uniform bill of lading" is something towards which some approach has been made by the carriers, and after protracted discussion a bill of lading was, a few years ago, proposed by a conference of railway representatives for adoption by all the railroad companies of the country.

Hostility of a violent character was, however, at once manifested against the proposed new instrument in nearly all of the leading commercial bodies of the country, and some of the principal lines therefore refused to adopt it.

Unity of action among the carriers was necessary in the case; since were all, save one even, of a number of competitive companies to adopt a bill of lading of a character unsatisfactory to the commercial interests, shippers could be relied on to divert all the business possible to the carrier declining the use of the obnoxious instrument. The combination in favor of the new bill of lading would have to be powerful indeed to encounter a risk of this sort.

The result has been that the proposed new bill of lading has not yet been generally adopted, though instruments containing very similar provisions are used on many lines. The form of the uniform bill as suggested is given in Appendix E.

The instructions to agents in regard to the use of this bill of lading forbade the issue of "duplicates" to take the place of lost or destroyed originals, except on written permission from the general freight department. And agents were directed, whenever a copy of a bill of lading should be desired, to stamp across the face of the copy a notice that such copy should not be deemed a bill of lading or contract of any kind, but only an acknowledgment that a bill of lading had been issued. This, of course, is intended as a safeguard against the negotiations of more than one instrument representing the same shipment.

Agents were further instructed, in case of shippers refusing to accept the bill of lading and demanding that freights be forwarded at carriers' risk, to make and sign upon the face of the instrument the following memorandum:

In consideration of higher rate charged, the property will be carried at carrier's liability, limited only as provided by common law and the laws of the United States and the several States, in so far as they apply.

The "higher rate" was to be fixed by putting any commodity, taken at carrier's risk, one class higher than if taken under the uniform bill of lading and charging accordingly.

This uniform bill of lading, it was also understood, was never to be used for live-stock shipments, for which a special live-stock contract, greatly limiting the carrier's liability, is generally in use.

Among the objections raised by the shipping interests to the proposed instrument was the insertion in it of the word "non-negotiable." These words it was supposed would greatly impair the usefulness of bills of lading as means for procuring discounts or getting money advanced on them as a security. This objection it was proposed to meet by providing that the bills should be stamped "non-negotiable except as provided in condition nine" of the proposed instrument. This would imply that when the property should be consigned to the "order of" the consignee, the bills should bear the *quasi* negotiable character heretofore explained.

The modification thus proposed was assented to by the carriers, as applicable to the bills of lading upon which the great staples of the country are moved to the markets.

But this concession by no means removed all objections of the shipping interests to the proposed uniform bill of lading. That feature of the instrument imposing one class higher rates on shipments unless made subject to its conditions aroused earnest antagonism. And in support of the shippers' position on the question it is alleged that no reduction of previous rates is proposed as a consideration of the acceptance of the conditions of the bill, but only an increase of such rates in case of refusal to accept them. It is further pointed out that the method of increasing the rates by placing the commodity shipped in the next higher class, is entirely arbitrary, and fails utterly to proportion the increased charge to the increased risk on different commodities.

For example, the first class and second class rates from Chicago to New York, as they have been for some time and as they are proposed to be maintained in connection with the conditions of the new bill of lading, are, respectively, 75 cents per hundred and 65 cents per hundred. The one class higher rate proposed to be charged if the conditions of the bill are not accepted, are \$1.12½ in one case and 75 cents in the other. In other words, the rate is increased 50 per cent in one case and only 15 per cent in the other. A similar disparity in the proportionate increase of rates occurs, though not to the same extent, in each of the classes.

The injustice of this principle of increasing rates is further shown by the fact that the ratio of increase between different trade centers is not uniform even as applied to the same class. For example, the increase on fourth-class freight from Cincinnati to Buffalo would be 37 per cent, while the increase on the same class from Cincinnati to Detroit would be 44 per cent. When it is considered how the relative adjustment of rates between different trade centers has been arrived at after long years of experiment, and what trouble would probably arise from a disturbance of existing ratios between rates on the same commodities between different cities, the proposed method of increasing rates on traffic taken at carrier's risk can hardly be approved.

The conditions of the proposed bill have also been severely criticised.

It would perhaps be out of place to go into a discussion of these conditions and the objections urged against them. It may be said, however, that the conditions proposed are no more stringent than those which are now inserted in most of the bill of lading in general use.

It has been stated above that the uniform bill of lading has not been generally adopted by the carriers; but this statement perhaps needs some qualifications. In the last issue of the so-called "Official Classification," which has been expressly adopted by a number of leading railway companies and filed by them with the Commission, under the head of "rules and special instructions," is the following:

22. Property will be carried at reduced class rates, as hereinafter shown, if subject to the conditions of the uniform bill of lading. If shipper elects not to accept the said reduced class rates and conditions he should so notify the agent of the receiving carrier at the time his property is offered for shipment, and if he does not give this notice it will be understood that he does desire his property carried subject to bill of lading conditions in order to secure the reduced class rate thereon. Property carried not subject to bill of lading conditions will be at the carrier's liability, limited only as provided by common law and by the laws of the United States and of the several States, in so far as they apply. Property thus carried is one class higher than property carried subject to the conditions of the uniform bill of lading and the cost of marine insurance is added over any part of the route that may be by water.

The uniform bill of lading is then set forth at length.

The acceptance by the shipper of this bill of lading is thus sought to be made by the carriers one of the "rules and regulations" referred to in the sixth section of the act to regulate commerce "which change, affect or determine any part or the aggregate" of their traffic charges. It would seem that the carriers thus adopting the uniform bill of lading, and publishing it in connection with their rules affecting their charges, have by their own action given the Commission authority to decide upon the propriety and justice of its provisions.

It is not intended to express any opinion on the general subject in this connection, but it seems proper to call attention to certain features of the classification which connection with the rule of increasing rates proposed in case a shipper refuse to accept the bill of lading may be misleading.

The classification considered without any reference to that rule shows that many articles are differently classed according as they are taken at owner's risk or carrier's risk, and frequently there is more than a single class difference between the same article according as it is taken at owner's risk or carrier's risk. For instance, "ale, beer, or porter in bottles in open carriers, C. R." is first class, and the same O. R. is third class. Suppose a shipper of such goods should decline to accept the bill of lading, he would have a right to suppose that the classification would be raised one higher, that is from third to second, but would probably be informed that in his case the raise would be to first class.

Such a condition of uncertainty should not be allowed to exist in railway tariffs.

The commercial organizations of the country seem generally to be of opinion that the ordinary form of bills of lading to be used in connection with uniform rates and uniform classification, should be merely a receipt for property coupled with an agreement to carry to and deliver at a specified destination, subject only to such restrictions and conditions as are established by common or statute law.

Any further conditions and restrictions, they think, should be the subject of special contract between shipper and carrier, and can not justly or properly be inserted in any uniform instrument in writing. The form suggested by the National Transportation Association is as follows:

OFFICIAL UNIFORM BILL OF LADING FOR INTERSTATE COMMERCE.

———— R. R. Co.,
————, 189—.

Received for transportation from ———, in apparent good order, except as noted, the property described below (value unknown), marked and consigned as indicated below, and subject to carriers' liabilities as laid down by the common law in force in the various States, Territories, provinces, or foreign countries through which the property must pass.

The rate of freight upon the property herein described shall not exceed — per — between — and —.

Marks and consignments.	Description of articles.	Weights, subject to correction.

————, *Agent*.

Upon the foregoing presentation the subject is submitted to the consideration of Congress.

CONVENTION OF RAILROAD COMMISSIONERS.

The plan of holding an annual conference of the railroad commissioners of the States, undertaken as an experiment a few years ago, has met with such success that it bids fair to become a permanent feature of the American system of railway regulation.

The idea of these conferences had its origin in the desirability of securing a greater degree of harmony in the administration of various laws relating to railway construction, traffic, regulations, statistical reports, and other matters of public interest connected with railroad transportation.

The advantages of such uniformity had been recognized by some of the State railroad commissioners long before the passage of the act to

regulate commerce, but the enactment of that law greatly emphasized its necessity.

Three annual sessions have been held in the city of Washington in which members of this commission participated. The Association of American Railway Accounting Officers has also been represented at each of these conferences, and the interest felt in them has attracted leading representatives of the railway press to all of the sessions.

The papers read at these conferences and the discussions suggested by them, as well as the interchange of views upon numerous practical questions connected with railway operation and management, have been of value and importance.

The sessions of the last conference were had at the hearing room of the Commission on the 3d and 4th days of March last. The chairman of the Commission was called to preside over the conference, and made an address on the subject of "The Railroad Problem." Reports or papers were also read and discussions had on the following subjects: Railway Legislation; Reasonable Rates; Uniformity of Railway Accounts; Safety Appliances; Discriminations from use of Private Cars, and other matters of general interest. The proceedings of the convention were published in book form and distributed.

The address of the chairman and synopsis of proceedings are given in Appendix F.

Perhaps the most important step taken by the last conference was the appointment of a committee to secure Congressional action in regard to safety appliances. A paper on this subject and also on the subject of heating of passenger cars prepared by the secretary will be found in Appendix G.

SPECIAL RATES TO AND FROM THE WORLD'S COLUMBIAN EXPOSITION.

At the instance of the World's Columbian Exposition, the roads carrying between Chicago and the eastern seaboard agreed to return free all articles carried at full rates to Chicago for exhibition, thus making a reduction equivalent to one-half the schedule charges on all exhibits carried to and from the Exposition. The directory of the Exposition deemed it expedient and necessary to ask additional transportation privileges in favor of foreign exhibitors, the nature of which appears from a letter to the carriers, written in behalf of the Exposition, which is in part as follows:

At a recent conference between the committee and Mr. James Dredge, commissioner from England, Herr Wermouth, commissioner from Germany, and Mr. Meyer, commissioner from Denmark, these gentlemen stated that by far the largest portion of the exhibits from their respective countries would not be returned; that much of the material would be of a character which it would not pay to return to the other side; and that further they thought that manufacturers would be much more easily induced to send exhibits if a half rate were made in both directions, the prospect being that but very little of the material exhibited would be returned at all.

After a long consultation it was agreed on behalf of the Transportation Committee that a request should be made upon the railroads for an exception in favor of foreign exhibits, so that while the exhibit of manufacturers in this country could be charged as originally proposed, namely, full rates outbound, with free return, the exhibits from foreign countries delivered to you by steamship lines on the seaboard should be charged at half rates in both directions.

I hope you will see your way not only to lay this before your people and to recommend it, but also to take it up with the association over which Mr. Goddard presides.

We are all of course vitally interested in the success of the Exposition, and more particularly in making it an international rather than a local affair. If by this slight concession we can materially increase the number of foreign exhibits, as the foreign commissioners believe, it should by all means be done; and the objections which you urged with so much force against the half rate do not, it seems to me, obtain in the case of foreign exhibits.

I feel confident that not only the roads in your association, but those in the Trunk Line Association as well, are disposed to deal with the Exposition in a liberal spirit, and I trust that this not unreasonable request may be complied with.

The carriers submitted this application, and asked "to be advised by the Commission of their views upon the subject." The purpose of this inquiry, it is assumed, was to obtain the opinion of the Commission as to the legal right to carry foreign and domestic exhibits at different rates or on different terms. Having no discretion in the matter, the Commission could only call attention to the equality provisions of sections 2 and 3 of the act, as modified by the following paragraph in section 22, viz:

That nothing in this act shall prevent the carriage, storage, or handling of property free or at reduced rates for the United States, State, or municipal governments, or for charitable purposes, or to or from fairs and expositions for exhibition thereat.

Under this exception it is apparent that merchandise, whether imported or domestic, may be lawfully carried from the seaboard or elsewhere to the exposition, "for exhibition thereat," free of charge to the shipper or at such reduced rates as may be agreed upon, subject, however, to the provisions of sections 2 and 3, which require like kinds of property to be carried on the same terms under the same circumstances.

In construing these equality provisions of the statute, the Commission has held that foreign merchandise can not lawfully be allowed lower rates or other preference by the inland carrier, but is on the same basis of equality with domestic goods in the matter of rates, charges, facilities, and treatment, and must be carried according to the tariffs established for the transportation of domestic merchandise of like character.

The order made by the Commission to carry into effect this ruling is respected and observed by most, though not all, of the carriers, and will be contested by some of them in the courts.

It can not be said, therefore, that the law is entirely settled as to what discriminations or preferences, if any, carriers may legally concede to the shippers of imported articles for whatever purpose intended.

The Commission is not advised as to whether the carriers would, in any state of the law or under any circumstances, concede to foreign exhibits half rates each way, as requested by the Exposition; nor, except as above stated, has any request been made of the Commission respecting such rates either on behalf of the carriers or the managers of the Exposition.

In view of the urgency with which this concession is requested, and the disposition of certain carriers to question the correctness of the decision above referred to, the subject is deemed of sufficient importance to justify its submission to Congress.

AMENDMENTS.

The statute requires that the annual report of the Commission shall contain such recommendations as to additional legislation relating to the regulation of commerce as the Commission may deem necessary.

In this connection the attention of Congress is respectfully asked to what is contained in previous annual reports on the subject of safety appliances, car mileage, ticket brokerage, payment of commissions, authority to call for reports from carriers and to appoint special agents to take testimony, interchange of business, through traffic at through rates over connecting lines, uniform classification, and indictment of corporations.

The Commission deems necessary and recommends amendments as follows:

(1) That some time be fixed within which carriers shall be required to adopt uniform classification of freights.

(2) That the tenth section of the act be so amended that corporations as well as their agents and employés shall be indictable.

(3) Amend the sections of the act in relation to procedure substantially as suggested on page 22 of this report.

All of which is respectfully submitted.

WILLIAM R. MORRISON.
WHEELOCK G. VEAZEY.
MARTIN A. KNAPP.

APPENDIX A.

NAMES AND COMPENSATION OF ALL EMPLOYÉS, TOGETHER WITH A
STATEMENT OF APPROPRIATION AND EXPENDITURES.

APPROPRIATION, STATEMENT OF EXPENDITURES AND PERSONS EMPLOYED BY THE COMMISSION.

STATEMENT OF APPROPRIATIONS AND AGGREGATE EXPENDITURES FOR THE INTER- STATE COMMERCE COMMISSION FOR THE FISCAL YEAR ENDING JUNE 30, 1891.

Sundry civil act, August 30, 1890.—For salaries of Commissioners, as provided by the "Act to regulate commerce"	\$37, 500. 00	
For salary of Secretary, as provided by the "Act to regulate commerce"	3, 500. 00	
		\$41, 000. 00
For all other necessary expenditures to enable the Commission to give effect to and execute the provisions of the said "Act to regulate commerce"	159, 000. 00	
Deficiency act, March 3, 1891.—To enable the Interstate Commerce Commission to properly carry out the objects of the "Act to regulate commerce"	25, 000. 00	
		225, 000. 00

Amount paid as salaries to Commissioners and Secretary, (Commissioner Augustus Schoonmaker's term of office having expired Dec. 31, 1890, and Commissioner Martin A. Knapp having been appointed March 2, 1891).....	\$39, 750. 00	
Amount expended for all other purposes.....	175, 094. 33	
		\$214, 844. 33

Unexpended balance June 30, 1891	10, 155. 67	

MEMO.—The unexpended balance given comprises the amount of appropriation for salaries of Commissioners unexpended (due to vacancy above)	\$1, 250. 00	
And the amount of appropriation for all other purposes, unexpended	8, 905. 67	
		10, 155. 67

The third annual report of the Statistician is now being printed, and the cost thereof, not yet ascertained, is to be paid out of the above unexpended balance.

DETAILED STATEMENT OF EXPENDITURES OF THE INTERSTATE COMMERCE COMMISSION FOR THE FISCAL YEAR ENDING JUNE 30, 1891.

Salaries of Commissioners and Secretary (one Commissioner's term of office having expired December 31, 1890, and one Commissioner having been appointed March 2, 1891)	\$39, 750. 00
--	---------------

Employés:	
One auditor, 12 months, at \$250 per month.....	\$3, 000. 00
One statistician, 12 months, at \$208.33 $\frac{1}{3}$ per month.....	2, 500. 00
Two law clerks, 12 months, at \$166.66 $\frac{2}{3}$ per month	4, 000. 00
One law clerk, 11 $\frac{1}{2}$ months and 6 days, at \$166.66 $\frac{2}{3}$ per month	1, 948. 92
One law clerk, 10 $\frac{1}{2}$ months, at \$166.66 $\frac{2}{3}$ per month	1, 750. 00

Employés—Continued.

One law clerk, 8 months and 10 days, at \$166.66 $\frac{2}{3}$ per month.....	\$1,387.08
One assistant auditor, 6 months at \$150 per month; 6 months at \$166.66 $\frac{2}{3}$ per month	1,900.00
One assistant statistician, 6 months at \$150 per month; 6 months at \$166.66 $\frac{2}{3}$ per month.....	1,900.00
One docket clerk, 12 months, at \$150 per month.....	1,800.00
One clerk, 6 months at \$125 per month; 6 months at \$137.50 per month.....	1,575.00
One clerk, 6 months at \$125 per month; 6 months at \$137.50 per month.....	1,575.00
One clerk, 12 months, at \$125 per month	1,500.00
One clerk, $\frac{1}{2}$ month, at \$100 per month; 11 $\frac{1}{2}$ months, at \$125 per month	1,487.50
One clerk, 6 months, at \$100 per month; 6 months, at \$125 per month	1,350.00
One clerk, 6 months, at \$100 per month; 6 months, at \$125 per month	1,350.00
Four stenographers, 12 months, at \$125 per month	6,000.00
One stenographer, 11 $\frac{1}{2}$ months and 15 days, at \$125 per month	1,495.97
One stenographer, stenographic work, 300 folios, at 11 $\frac{1}{2}$ per folio; 39 days, at \$2.50 per day; 2 months, at \$100 per month; 8 $\frac{1}{2}$ months, at \$125 per month.....	1,394.51
One stenographer, 6 months, at \$125 per month.....	750.00
One stenographer, 12 months, at \$100 per month.....	1,200.00
One stenographer, 7 $\frac{1}{2}$ months, at \$75 per month; 4 months and 3 days, at \$100 per month	997.50
One stenographer, 7 $\frac{1}{2}$ months and 11 days, at \$100 per month.....	786.66
One stenographer, 26 days, at \$2.50 per day; 1 $\frac{1}{2}$ months, at \$75 per month; 4 months and 1 day, at \$100 per month..	515.40
One stenographer, 8 days, at \$2.50 per day; 3 $\frac{1}{2}$ months, at \$100 per month	370.00
One stenographer, 1 month, at \$125 per month.....	125.00
One special employé, 12 months, at \$100 per month	1,200.00
One special employé, 7 months and 4 days, at \$5 per day..	940.00
One special employé, 3 months and 3 days, at \$5 per day..	405.00
One special employé, 10 days, at \$5 per day	50.00
Forty clerks, 12 months, at \$100 per month	48,000.00
One clerk, 11 $\frac{1}{2}$ months and 12 $\frac{1}{2}$ days, at \$100 per month ...	1,191.83
Two clerks, 11 $\frac{1}{2}$ months, at \$100 per month	2,300.00
One clerk, 11 $\frac{1}{2}$ months and 1 day, at \$100 per month	1,153.33
One clerk, 1 $\frac{1}{2}$ months and 13 days, at \$75 per month; 9 $\frac{1}{2}$ months and 7 days, at \$100 per month	1,117.92
One clerk, 10 $\frac{1}{2}$ months and 15 days, at \$100 per month	1,099.35
One clerk, 10 months, at \$100 per month.....	1,000.00
One clerk, 9 months and 25 days, at \$100 per month	983.33
One clerk, 9 months and 19 days, at \$100 per month	961.82
One clerk, 9 months and 6 days, at \$100 per month	920.00
One clerk, 8 $\frac{1}{2}$ months, at \$100 per month.....	850.00
One clerk, 7 months and 12 days, at \$75 per month; 2 months, at \$100 per month	755.00
One clerk, 6 $\frac{1}{2}$ months and 10 days, at \$100 per month.....	682.25

Employés—Continued.

One clerk, 5 months and 14 days, at \$100 per month	\$546.66
One clerk, 2 months and 4 days, at \$100 per month	213.33
One clerk, 1½ months and 12 days, at \$100 per month	188.70
One clerk, 1½ months and 3 days, at \$100 per month	159.67
One clerk, ½ month and 15 days, at \$100	100.45
One clerk, 1 month, at \$100 per month	100.00
One clerk, ½ month, at \$100 per month	50.00
One clerk, 22 days, at \$2.50 per day	55.00
Six clerks, junior grade, 12 months, at \$75 per month	5,400.00
One clerk, junior grade, 11½ months and 4 days, at \$75 per month	872.17
One clerk, junior grade, 11½ months, at \$75 per month	862.50
One clerk, junior grade, 10 months and 7 days, at \$75 per month	766.93
One clerk, junior grade, 9½ months and 6 days, at \$75 per month	727.50
One clerk, junior grade, 1½ months and 14 days, at \$75 per month	146.37
One clerk, junior grade, 1 month and 1 day, at \$75 per month	77.50
Four messengers, 12 months, at \$60 per month	2,880.00
One messenger, 11½ months and 14 days, at \$60 per month	718.00
One messenger, 12 months, at \$30 per month	360.00
One messenger, 9½ months and 8 days, at \$1.50 per day ...	382.50
One typewriter, 11½ months and 9 days, at \$75 per month ..	885.00
One typewriter, 12 months, at \$60 per month	720.00
One typewriter 9½ months and 13 days, at \$50 per month; 2 months, at \$60 per month	615.95
One typewriter, 6½ months and 14 days, at \$50 per month ..	347.57
One typewriter, 2 months and 14 days, at \$2 per day	132.00
One typewriter, 1½ months and 11 days, at \$60 per month ..	111.29
One typewriter, 1½ months and 10 days, at \$45 per month ..	82.01
One typewriter, 4 days, at \$2.50 per day	10.00
One translator, 3 weeks and 5 days, at \$25 per week	95.82
One translator, 9 days, at \$25 per week	32.14
One translator, 10 days, at \$3 per day	30.00
One translator, 10 days, at \$2 per day	20.00
Stenographic work, 177 folios, at 25 cents per folio; 169 manifold copies, at 5 cents per folio	52.70
\$124, 010. 13	

Traveling expenses of Commission from Washington to New York, Boston, Baltimore, Chicago, and St. Louis at divers times, and to Philadelphia, Albany, Pittsburgh, Harrisburg, Cleveland, Cincinnati, Kansas City, Topeka, Milwaukee, St. Paul, Fargo, Spokane Falls, Tacoma, Seattle, San Francisco, Salt Lake City, Boise City, Kearney, Portland, Denver, Charleston, Aiken, Jacksonville, Chattanooga, Atlanta, and other places, to make investigation (including expenses of the Secretary and stenographer when accompanying the Commission); also expenses of auditor, special agent, and law clerk when travelling for Commission; also extra clerk and stenographer sometimes engaged at places of investigation:

Railway fares and accommodations while traveling, transportation of baggage, and omnibus fares	3,688.44
--	----------

Hotel bills and meals en route	\$2, 736. 21	
Stationery and necessary messenger service, extra clerks and stenographers	232. 46	
Rent of rooms at New York, Jacksonville, and Aiken, and chairs for room at Jacksonville.....	29. 25	
Marshals' fees at New York and Baltimore (including fee of witness)	6. 00	
Tickets and photographs of tickets to preserve evidence.....	56. 50	
		\$6, 748. 86
Rent for offices—fifth, sixth, and seventh floors, and three rooms on eighth floor. (This charge includes heating, watchman, elevator, and water service).....		11, 479. 92
Desks, tables, chairs, stools, bookcases, filing cases, and typewriters.....		1, 857. 81
Printing reports, circulars, decisions, orders, blanks, and stationery. (The third annual report of the statistician is now being printed, and, the cost thereof not having been ascertained, is not included in this item).....		24, 864. 29
Railway and law books.....		400. 71
Prosecution of violation of law.....		2, 000. 00
Janitor, ice, carrying mail, stamps, telegrams, expressage, and incidental expenses		3, 732. 61
Total amount of expenditures from July 1, 1890, to June 30, 1891...		214, 844. 33

EDW. A. MOSELEY,
Secretary and Disbursing Agent.

CLERICAL FORCE OF THE COMMISSION FOR THE FISCAL YEAR ENDING JUNE 30, 1891,

Name.	Office.	Whence appointed.	Time employed.	Per month.
C. Curtice McCain*	Auditor	New York	1 year	\$250. 00
Henry C. Adams	Statistician	Michigan	do	208. 33 $\frac{1}{3}$
Lewellyn A. Shaver	Law clerk	Alabama	do	166. 66 $\frac{2}{3}$
Henry Talbot	do	Illinois	do	166. 66 $\frac{2}{3}$
A. G. Safford	do	Dist. of Columbia	11 $\frac{1}{2}$ months 6 days	166. 66 $\frac{2}{3}$
John Theo. Wentworth†	do	Wisconsin	10 $\frac{1}{2}$ months	166. 66 $\frac{2}{3}$
W. D. Dabney	do	Virginia	8 months 10 days	166. 66 $\frac{2}{3}$
Jesse M. Smith*	Assistant auditor	Alabama	6 months	166. 66 $\frac{2}{3}$
Do	do	do	do	150. 00
James A. Case*	Asst. statistician	Indiana	do	166. 66 $\frac{2}{3}$
Do	do	do	do	150. 00
Martin S. Decker	Docket clerk	New York	1 year	150. 00
George T. Roberts*	Clerk	Vermont	6 months	137. 50
Do	do	do	do	125. 00
Stephen C. Mason*	do	do	do	137. 50
Do	do	do	do	125. 00
Edward L. Pugh	do	Alabama	1 year	125. 00
George A. C. Christiancy*	do	Colorado	11 $\frac{1}{2}$ months	125. 00
Do	do	do	$\frac{1}{2}$ month	100. 00
Russell MacCarthy*	do	New York	6 months	125. 00
Do	do	do	do	100. 00
William Moore Hatch*	do	Vermont	do	125. 00
Do	do	do	do	100. 00
Frank Lyon	Stenographer	Virginia	1 year	125. 00
Daniel M. Wood	do	New York	do	125. 00
Charles H. Burnett	do	Dist. of Columbia	do	125. 00
J. Howard Fishback	do	do	do	125. 00
Solon T. Williams†	do	Kansas	6 months	125. 00
John J. McAuliffe	do	New Hampshire	11 $\frac{1}{2}$ months 15 days	125. 00
George C. Ohren*	do	Illinois	8 $\frac{1}{2}$ months	125. 00
Do	do	do	2 months	100. 00
Do	Stenographic work	do	300 folios, per folio	11 $\frac{1}{2}$
Do	Typewriter	do	1 month 13 days	†2. 50
Eugene Rosis†	Stenographer	Pennsylvania	1 month	125. 00
D. Henry Ainsworth	do	Kansas	1 year	100. 00
James T. Harbin§	do	Colorado	4 months 3 days	100. 00
Do	do	do	7 $\frac{1}{2}$ months 10 days	75. 00
Frank T. Merry	do	Michigan	7 $\frac{1}{2}$ months 11 days	100. 00
Mendum Blumenberg*	do	California	3 $\frac{1}{2}$ months	100. 00
Do	do	do	8 days	†2. 50
Clarence E. Dawson†	do	Maryland	4 months 4 days	100. 00
Do	do	do	$\frac{1}{2}$ month	75. 00
Do	do	do	26 days	†2. 50
Frank G. Kretschmer	Special employé	South Dakota	1 year	100. 00
Edwin P. Davis†	do	Illinois	7 months 4 days	†5. 00
Walter F. Preston	do	do	3 months 3 days	†5. 00
D. M. Hurst†	do	do	10 days	†5. 00
Harry G. Morrison	Clerk	New York	1 year	100. 00
William H. Denlinger	do	Illinois	do	100. 00
Thomas Jackson, jr.	do	New York	do	100. 00
Harry Newcomb	do	Michigan	do	100. 00
Nathan C. Munroe	do	Georgia	do	100. 00
Willoughby S. Chesley	do	Maryland	do	100. 00

* Promoted.

† Resigned.

‡ Per day.

§ Reduced.

CLERICAL FORCE OF THE COMMISSION FOR THE FISCAL YEAR ENDING JUNE 30, 1891—
Continued.

Name.	Office.	Whence appointed.	Time employed.	Per month.
Louis Livandais	Clerk	Louisiana	1 year	\$100.00
Albert E. Furniss	do	Connecticut	do	100.00
Robert E. Lewis	do	Dist. of Columbia	do	100.00
Walter E. Burleigh	do	New Hampshire	do	100.09
Edwin B. Smith	do	Texas	do	100.00
Jack F. Moss	do	Mississippi	do	100.00
Robert G. Batton	do	Georgia	do	100.00
John B. Lybrook	do	Virginia	do	100.00
Frederick O. Roman	do	Dist. of Columbia	do	100.00
Edward B. Blizzard	do	West Virginia	do	100.00
Peyton B. Kemp	do	Tennessee	do	100.00
George M. Crosland	do	South Carolina	do	100.00
James J. Willie	do	Florida	do	100.00
W. Wheaton Tillinghast	do	Rhode Island	do	100.00
Rowan B. Tuley	do	Kentucky	do	100.00
Milton H. Mathews	do	Maine	do	100.00
Frederick P. Russell	do	Massachusetts	do	100.00
Robert F. McMillan	do	Dist. of Columbia	do	100.00
Harold Remington	do	Ohio	do	100.00
John A. Shearer	do	Pennsylvania	do	100.00
Fred S. Towle	do	Massachusetts	do	100.00
James Phillips	do	North Carolina	do	100.00
Silas C. Robb	do	Kansas	do	100.00
Charles A. Mills	do	Delaware	do	100.00
John T. Marchand	do	Pennsylvania	do	100.00
Charles D. Thompson	do	Ohio	do	100.00
John H. Tilton	do	New York	do	100.00
Robert A. H. Clark	do	Dist. of Columbia	do	100.00
James S. Fitzhugh	do	Texas	do	100.00
Edward C. Spofford	do	Idaho	do	100.00
Edwin Tarrisse	do	Pennsylvania	do	100.00
William Connolly	do	North Dakota	do	100.00
Patrick S. Dorney	do	Washington	do	100.00
Tileston F. Chambers	do	Dist. of Columbia	do	100.00
Willie P. Mangum	do	Arkansas	11½ months 12½ days	100.00
George F. Howard*	do	Indiana	11½ months 1 day	100.00
Paul Beckwith	do	Missouri	11½ months	100.00
Grassie G. Bulkley	do	Dist. of Columbia	do	100.00
D. J. Canty	do	Illinois	10½ months 15 days	100.00
William R. Williams†	do	North Carolina	10 months	100.00
Albin B. Veazey	do	Vermont	9½ months 10 days	100.00
Felix R. McCloskey ‡	do	California	9½ months 7 days	100.00
Do	Clerk, junior grade.	do	1½ months 13 days	75.00
Arthur D. Marshall	Clerk	Oregon	9½ months 4 days	100.00
Harry E. Van Der Voort†	do	Nebraska	9 months 6 days	100.00
Hugh B. Chappell	do	Maryland	8½ months	100.00
John F. Dwyer	do	Massachusetts	6½ months 10 days	100.00
Desha Breckinbridge†	do	Kentucky	5 months 14 days	100.00
Harry Hall Hanson	do	New Hampshire	2 months 4 days	100.00
Walter Norris ‡	do	New Jersey	2 months	100.00
Do	Clerk, junior grade.	do	7 months 12 days	75.00
C. L. Scott	Clerk	Iowa	1½ months 12 days	100.00

* Deceased.

† Resigned.

‡ Promoted.

APPROPRIATIONS, EXPENDITURES, AND PERSONS EMPLOYED. 77

CLERICAL FORCE OF THE COMMISSION FOR THE FISCAL YEAR ENDING JUNE 30, 1891—
Continued.

Name.	Office.	Whence appointed.	Time employed.	Per month.
Bloom D. Chapman	Clerk	New York	1½ months 3 days	\$100. 00
James H. Leonard	do	Missouri	1 month	100. 00
George W. Brown *	do	Indiana	½ month 15 days	100. 00
L. Fenn Fletcher	do	Illinois	½ month	100. 00
Edward S. Raymond *	do	Massachusetts	1 month 9 days	† 2. 50
Buford A. Lynch	Clerk, junior grade	Alabama	1 year	75. 00
Ervin C. Bowen	do	Dist. of Columbia	do	75. 00
Duncan L. Richmond	do	do	do	75. 00
Harry S. Milstead	do	Virginia	do	75. 00
Fred. A. Cochran	do	New Jersey	do	75. 00
John H. Clipper	do	Maryland	do	75. 00
Thomson F. Mason	do	Virginia	11½ months 4 days	75. 00
Harry F. Clark	do	Pennsylvania	11½ months	75. 00
Fred. W. McReynolds	do	Indiana	10 months 7 days	75. 00
Miles J. Renick	do	Georgia	9½ months 6 days	75. 00
Henry G. Williams	do	North Carolina	1½ months 14 days	75. 00
George Hill Howard *	do	California	1 month 1 day	75. 00
James H. Lewis	Messenger	Dist. of Columbia	1 year	60. 00
Richmond F. Bingham	do	New Hampshire	do	60. 00
Carlton R. Willett	do	Texas	do	60. 00
Charles Eugene Foote	do	Ohio	do	60. 00
C. Lee Williams	do	Dist. of Columbia	11½ months 14 days	60. 00
Abram P. Worthington	do	Ohio	1 year	30. 00
James Roy Pipes	do	West Virginia	9½ months 8 days	† 1. 50
William R. Mack	Typewriter	Michigan	11½ months 9 days	75. 00
Victor A. Lewis	do	Maryland	1 year	60. 00
Eugene L. Gaddess †	do	Virginia	2 months	60. 00
Do	do	do	9½ months 13 days	50. 00
Charles F. Gerry	do	Maryland	1½ months 11 days	60. 00
Dwight Anderson *	do	Dist. of Columbia	6½ months 14 days	50. 00
John C. C. Patterson	do	Maryland	1½ months 10 days	45. 00
James K. McCalmont *	do	Pennsylvania	2 months 14 days	† 2. 50
John W. Herron *	do	Dist. of Columbia	4 days	† 2. 50
John P. Des Garrennes *	Translator	do	3 weeks 5 days	§ 25. 00
Herman Schonfeld *	do	do	1 week 3 days	§ 25. 00
B. Bunnemeyer *	do	do	10 days	† 3. 00
William De Batz *	do	do	do	† 2. 00

* Resigned.

† Per day.

‡ Promoted.

§ Per week.

LIST OF PERSONS EMPLOYED BY THE INTERSTATE COMMERCE COMMISSION DECEMBER 1, 1891.

Name.	Office.	Whence appointed.	Salary per month.
C. Curtice McCain	Auditor	New York	\$250. 00
Henry C. Adams	Statistician	Michigan	208. 33½
A. G. Safford	Law clerk	District of Columbia	166. 66½
Lewellyn A. Shaver	do	Alabama	166. 66½
Henry Talbott	do	Illinois	166. 66½
W. D. Dabney	do	Virginia	166. 66½
Jesse M. Smith	Assistant auditor	Kentucky	166. 66½
James A. Case	Assistant statistician	Indiana	166. 66½

78 REPORT OF THE INTERSTATE COMMERCE COMMISSION.

LIST OF PERSONS EMPLOYED BY THE INTERSTATE COMMERCE COMMISSION DECEMBER 1, 1891—Continued.

Name.	Office.	Whence appointed.	Salary permonth.
Martin S. Decker	Docket clerk	New York	\$150.00
George T. Roberts	Clerk	Vermont	137.50
Stephen C. Mason	do	do	137.50
Edward L. Pugh	do	Alabama	125.00
George A. C. Christianity	do	Colorado	125.00
Russell MacCarthy	do	New York	125.00
William Moore Hatch	do	Vermont	125.00
Frank Lyon	Stenographer	Virginia	125.00
Daniel M. Wood	do	New York	125.00
J. Howard Fishback	do	District of Columbia ..	125.00
Harry G. Morison	Clerk	New York	100.00
William Holliday Denlinger ..	do	Illinois	100.00
Thomas Jackson, jr	do	New York	100.00
Harry Newcomb	do	Michigan	100.00
Nathan C. Munroe	do	Georgia	100.00
Willoughby S. Chesley	do	Maryland	100.00
Albert E. Furniss	do	Connecticut	100.00
Arthur D. Marshall	do	Oregon	100.00
Robert E. Lewis	do	District of Columbia ..	100.00
Robert Grosvenor Batten	do	Georgia	100.00
Walter E. Burliegh	do	New Hampshire	100.00
Edwin B. Smith	do	Texas	100.00
Jack F. Moss	do	Mississippi	100.00
John B. Lybrook	do	Virginia	100.00
Frederick O. Roman	do	District of Columbia ..	100.00
Edward B. Blizzard	do	West Virginia	100.00
Peyton B. Kemp	do	Tennessee	100.00
George M. Crosland	do	South Carolina	100.00
James J. Willie	do	Florida	100.00
W. Wheaton Tillinghast	do	Rhode Island	100.00
Rowan B. Tuley	do	Kentucky	100.00
Milton H. Mathews	do	Maine	100.00
Frederick P. Russell	do	Massachusetts	100.00
Robert F. McMillan	do	Indiana	100.00
Harold Remington	do	Ohio	100.00
Grassie G. Bulkley	do	District of Columbia ..	100.00
Fred. S. Towle	do	Massachusetts	100.00
John A. Shearer	do	Pennsylvania	100.00
James Phillips	do	North Carolina	100.00
Silas C. Robb	do	Kansas	100.00
Charles A. Mills	do	Delaware	100.00
John T. Marchand	do	Pennsylvania	100.00
Charles D. Thompson	do	Ohio	100.00
John H. Tilton	do	New Jersey	100.00
Robert A. H. Clark	do	District of Columbia ..	100.00
James S. Fitzhugh	do	Texas	100.00
Edward C. Spofford	do	Idaho	100.00
Edwin Tarrisse	do	Pennsylvania	100.00
William Connolly	do	North Dakota	100.00
Albin B. Veazey	do	Vermont	100.00
Felix R. McCloskey	do	California	100.00
Hugh B. Chappell	do	Maryland	100.00
John F. Dwyer	do	Massachusetts	100.00

APPROPRIATIONS, EXPENDITURES, AND PERSONS EMPLOYED. 79

LIST OF PERSONS EMPLOYED BY THE INTERSTATE COMMERCE COMMISSION DECEMBER 1, 1891—Continued.

Name.	Office.	Whence appointed.	Salary per month.
Dennis J. Canty.....	Clerk.....	Illinois.....	\$100.00
Harry Hall Hanson.....	do.....	New Hampshire.....	100.00
Bloom D. Chapman.....	do.....	New York.....	100.00
Walter Norris.....	do.....	New Jersey.....	100.00
John W. Collins.....	do.....	Nebraska.....	100.00
Samuel T. Gray.....	do.....	Maryland.....	100.00
Louis W. Perkins.....	do.....	Louisiana.....	100.00
Alfred C. Smith.....	do.....	New York.....	100.00
John H. Anderson.....	do.....	Indiana.....	100.00
Henry G. Williams.....	do.....	North Carolina.....	100.00
William A. King.....	do.....	New York.....	100.00
Buford A. Lynch.....	Clerk, junior grade.....	Alabama.....	75.00
Ervin C. Bowen.....	do.....	District of Columbia.....	75.00
Duncan L. Richmond.....	do.....	District of Columbia.....	75.00
Harry S. Milstead.....	do.....	Virginia.....	75.00
Fred A. Cochran.....	do.....	New Jersey.....	75.00
John H. Clipper.....	do.....	Maryland.....	75.00
Harry F. Clark.....	do.....	Pennsylvania.....	75.00
Miles J. Renick.....	do.....	Georgia.....	75.00
William W. Chance.....	do.....	Illinois.....	75.00
F. H. Burr.....	do.....	Montana.....	75.00
James H. Lewis.....	Messenger.....	District of Columbia.....	60.00
C. Lee Williams.....	do.....	District of Columbia.....	60.00
Carlton R. Willett.....	do.....	Texas.....	60.00
Richmond F. Bingham.....	do.....	New Hampshire.....	60.00
Charles Eugene Foote.....	do.....	Ohio.....	60.00
PERSONS TEMPORARILY EMPLOYED.			
Frank G. Kretschmer.....	Special employé.....	South Dakota.....	100.00
C. L. Scott.....	Clerk.....	Iowa.....	100.00
Henry E. Kondrup.....	do.....	District of Columbia.....	100.00
John J. McAuliffe.....	Stenographer.....	New Hampshire.....	125.00
George C. Ohren.....	do.....	Illinois.....	125.00
D. Henry Ainsworth.....	do.....	Kansas.....	100.00
Frank T. Merry.....	do.....	Michigan.....	100.00
Mendum Blumenberg.....	do.....	California.....	100.00
James T. Harbin.....	do.....	Colorado.....	100.00
Charles W. Berry.....	do.....	Alabama.....	100.00
William R. Mack.....	Typewriter.....	Michigan.....	75.00
Victor A. Lewis.....	do.....	Maryland.....	60.00
Eugene L. Gaddess.....	do.....	Virginia.....	60.00
Charles F. Gerry.....	do.....	Maryland.....	60.00
John C. C. Patterson.....	do.....	do.....	60.00
Edward D. Anderson.....	do.....	Missouri.....	50.00
Goldwin S. Patten.....	do.....	Maine.....	50.00
Abram P. Worthington.....	Messenger.....	Ohio.....	30.00
George W. Hess.....	do.....	Illinois.....	*2.00

* Per day.

EDW. A. MOSELEY,
Secretary.

APPENDIX B.

STATEMENT OF POINTS DECIDED BY THE COMMISSION DURING
THE YEAR ENDING NOVEMBER 30, 1891.

STATEMENT OF IMPORTANT POINTS DECIDED BY THE
COMMISSION SINCE ITS ORGANIZATION.

**STATEMENT OF POINTS DECIDED DURING THE YEAR ENDING
NOVEMBER 30, 1891.**

Proctor & Gamble *v.* The Cincinnati, Hamilton and Dayton Railroad Company, The Pittsburg, Cincinnati and St. Louis Railway Company, and The Pennsylvania Railroad Company.

Proctor & Gamble *v.* The Cleveland, Cincinnati, Chicago and St. Louis Railway Company, The Lake Shore and Michigan Southern Railway Company, and The New York Central and Hudson River Railroad Company.

Proctor & Gamble *v.* Orland Smith and H. C. Yergason, Receivers of The Cincinnati, Washington and Baltimore Railroad Company, and The Baltimore and Ohio Railroad Company.

A petition or motion for rehearing can not be granted on mere allegation of error in the findings of fact, and such a petition or motion must be supported by proof showing, *prima facie* at least, that there was such error. The affidavits in this case fail to make such showing.

The New York Board of Trade and Transportation, The Commercial Exchange of Philadelphia and The San Francisco Chamber of Commerce *v.* The Pennsylvania Railroad Company, The Pittsburg, Fort Wayne and Chicago Railway Company, The Pittsburg, Cincinnati and St. Louis Railway Company, The New York Central and Hudson River Railroad Company, The Michigan Central Railroad Company, The Lake Shore and Michigan Southern Railway Company, The Chicago and Grand Trunk Railway Company, The New York, Lake Erie and Western Railroad Company, The Chicago and Atlantic Railway Company, The New York, Pennsylvania and Ohio Railroad Company, The New York, Chicago and St. Louis Railroad Company, The West Shore Railroad Company, The Delaware, Lackawanna and Western Railroad Company, The Grand Trunk Railway Company of Canada, The Wabash Railroad Company, The Baltimore and Ohio Railroad Company, The Philadelphia and Reading Railroad Company, The Central Railroad Company of New Jersey, The Boston and Maine Railroad Company, The Louisville, New Orleans and Texas Railway Company, The St. Louis, Iron Mountain and Southern Railway Company, The Southern Pacific Company, The Union Pacific Railway Company, The Northern Pacific Railroad Company, The Canadian Pacific Railway Company, The Texas and Pacific Railway Company, The Illinois Central Railroad Company, The Lehigh Valley Railroad Company.

The act to regulate commerce specifically provides for the regulation of the transportation of foreign merchandise when brought from a foreign port of shipment to a port of entry of the United States and transported from such port of entry to a place within the United States upon a through bill of lading, or when transported from a foreign port to a port of entry of a foreign country

adjacent to the United States and transported from such port of entry to a place of destination within the United States upon a through bill of lading.

2. The regulation thus provided is such as regulates the rates, charges, facilities afforded, and treatment of the foreign merchandise from the port of entry in either instance, as the case may be, to the place of destination of the merchandise within the United States, but it is not a regulation that extends to the control of rates made upon such foreign merchandise in the foreign port of shipment for its carriage to the port of entry of the United States or to the port of entry in a foreign country adjacent to the United States.
3. With respect to that part of the carriage of such foreign merchandise between the ports of entry and the place of destination in the United States, the rule of the statute is that it is entitled to no preference in rates, charges, facilities afforded, and treatment over domestic merchandise or other merchandise when these are a like kind of traffic transported from such ports of entry to such places of destination, but as to that service stands upon the same basis of equality with domestic merchandise or other freight as to rates, charges, facilities afforded, and treatment, and must be carried upon this part of its journey under the inland tariffs of the carriers established for the transportation of domestic merchandise or other freights, and under the same rules governing their carriage, as to weight, bulk, value, expenses of carriage, and all such other circumstances and conditions as enter into the making of just and reasonable rates and of avoiding unlawful prejudice and unjust discriminations, such as is provided by the statute.
4. The circumstances and conditions surrounding the making of the rates upon such foreign merchandise in the foreign port of shipment have had their weight and operation in its foreign carriage to the port of entry and in the charges made and facilities afforded for that service, but after such foreign merchandise has been brought within the United States on its way to destination in the United States it encounters other circumstances and conditions that are controlling in this part of its carriage, namely, the laws of the United States made for the regulation of its rates and carriage.
5. The publication of such inland joint tariffs for the transportation of such foreign merchandise under the statute and of advances and reductions should be made at the port of entry and also at the point of destination of freight in the United States by posting the same in a public place at the depot of the carrier where the freight is received in the port of entry and where it is delivered at the place of destination in the United States.
6. The term "a like kind of traffic," as it occurs in section 2 of the act to regulate commerce, and as used in this report and opinion, does not mean traffic that is identical, but it means traffic that is of "a like kind" with other freight in the elements of a fair and just classification for the purpose of arriving at a just and reasonable rate and a rate that will avoid unjust discrimination and unlawful preference.
7. Commodity class rates described and discussed.
8. The power of interstate carriers to make commodity class rates and special class rates to meet the circumstances and conditions of traffic along their lines recognized and defined.

Coxe Brothers & Company v. The Lehigh Valley Railroad Company.

1. *Classification of freight.*—Freight classification is deemed by the railroads convenient and essential to any practical system of rate making, and is so recognized though not enjoined by the act to regulate commerce.
2. *Same.*—When classification is used as a device to effect unjust discrimination or as a means of violating other provisions of the statute, the act requires the Commission to so revise and correct such classification and arrangement as to correct the abuse.
3. *Lower rates for longer hauls.*—Besides terminal expenses and other aggregate charges not dependent upon the distance freight is moved, there are other conditions which justify a lower proportionate charge for longer distances.
4. *Through carriage over connecting lines.*—Through transportation over connecting lines is favored by the statute, and the rate over such through lines is correctly adjusted upon the distance through, and not upon the shorter distances over, the several lines.
5. *Same.*—Two roads by agreement carried bituminous coal from the Snow Shoe region in Pennsylvania to Perth Amboy, N. J., a distance of about 300 miles, at a higher aggregate, but lower proportionate, rate than was charged by one road on anthracite for the distance over its line, the distance over such line being about 150 miles. *Held*, That this was no undue preference in favor of the bituminous coal traffic, and subjected anthracite traffic to no unreasonable disadvantage, except as the anthracite charges might be excessive.
6. *Practicable regulation.*—A railroad company carrying coal as interstate traffic is the owner of the capital stock of a coal company, which, under its charter holds lands, mines, buys and sells coal, and ships over the lines of said railroad company. *Held*, Where such conditions result in violations of the act to regulate commerce, the only regulation practicable is the enforcement of the provision of the act requiring rates to be reasonable.
7. *Group rates.*—It is often impracticable to establish different rates on the same commodity from practically the same locality to the same market, and the owners of mines in the Lehigh anthracite region are subjected to no unreasonable disadvantage from the present grouping of mines based on more than actual distance when shipping east and less than actual distance when shipping west.
8. *Unreasonable rates.*—A railroad company had in force for a period of more than two years next before the act to regulate commerce took effect a scale of charges on anthracite coal considerably lower than its present rates, which are higher on coal than on iron ore, pig iron, and other low grade freight, and also higher than the charges of said road on general freight, the expense of carrying which is much greater than the expense on coal. *Held*, That such higher rates on coal are unreasonable.
9. *Commission to determine rates.*—The act to regulate commerce declares every unreasonable charge unlawful, requires the Commission to enforce its provisions and confers the power, and imposes on the Commission the duty, of determining what are reasonable rates, as well as what are unreasonable.
10. *Reasonable rates.*—A railroad company by putting in force a rate of charges furnishes evidence that the rate is profitable, which is

more convincing when such rate is long maintained; and where a carrier put in force and maintained for nearly two years, immediately after the act to regulate commerce took effect, a scale of charges largely in excess of that maintained for two years next before the act, and the lower rates were sufficient to meet all the obligations of the road, including income on investment. *Held*, The higher rate should be reduced.

The Boston Fruit and Produce Exchange v. The New York and New England Railroad Company, The New York, New Haven and Hartford Railroad Company, The Pennsylvania Railroad Company, The Central Railroad Company of New Jersey, and The Lehigh Valley Railroad Company.

1. The words "common control, management or arrangement," as found in the first section of the act to regulate commerce, defined and applied to the special facts of the case.
2. Section 7 of the act may properly be considered in construing the general jurisdictional clause of the first section.
3. Contracts and tariffs filed with the commission under section 6 of the act may be considered, although not specifically introduced in evidence on the hearing.
4. The Boston Fruit and Produce Exchange is a mercantile society, such as is described in the thirteenth section of the act, and as such has the right to maintain a proceeding like the present, without showing special damage to itself.
5. Elements that will be considered in fixing the rates for the transportation of perishable fruit, under special circumstances, discussed and applied to the facts found.
6. The gist of the present complaint is that the rate on peaches from the Delaware district to Boston is unreasonably high and oppressive, and, the fact being so found, a reduction is ordered.

Hamilton & Brown v. The Chattanooga, Rome and Columbus Railroad Company, The Louisville and Nashville Railroad Company, and The Nashville, Chattanooga and St. Louis Railway Company.

1. The rates on freight from interstate points to Kramer, Georgia, via The Chattanooga, Rome and Columbus Railroad, are made by taking the through rate to recognized "basing points," and adding thereto that local rate which will give the lowest combination. This method of determining a rate criticised, and, as applied to such traffic to Kramer, operates as an unjust discrimination against that locality.
- 2 All the carriers participating in the traffic, the rates for which were questioned in this proceeding, were not made parties, and the case, while showing that the through rates were discriminatory and unjust, failed to disclose sufficient facts upon which an accurate decision could be based, and accordingly it was held that the carriers who were parties to the proceeding be required to adjust their respective tariffs so as to avoid discrimination against Kramer, and that the carriers who were not parties be summoned to appear and show cause why a like order be not issued as to the business in which they participate, unless their tariffs are voluntarily adjusted so as to avoid the discrimination complained of.

New Orleans Cotton Exchange v. Louisville, New Orleans and Texas
Railway Company.

1. *Posting schedules of rates and charges.*—Common carriers are required to post in their depots, stations, and offices, schedules showing the rates and charges for transportation in force on the routes of such carriers, as well on freight which is, as on that which is not, for export.
2. *Order of reparation.*—Where a carrier corrects the inequality of rates complained of and thus makes all the reparation asked in the complaint, or that the Commission could afford, no order is required, and none will be issued.

The Delaware State Grange of the Patrons of Husbandry v. The New York, Philadelphia and Norfolk Railroad Company, The Delaware Railroad Company, The Philadelphia, Wilmington and Baltimore Railroad Company, and The Pennsylvania Railroad Company.

1. For a special service by a carrier, such as the transportation of perishable freight, requiring quick movement, prompt delivery at destination, special fitting up of cars, their withdrawal from other service, and their return empty on fast time, all involving greater expense to the carrier, a higher rate than for the carriage of ordinary freight is warranted by the conditions of the service and is reasonable and just.
2. But the higher rate for a special service should bear a just relation to the value of the service to the traffic, and is not wholly in the discretion of the carrier. While a carrier should be fully compensated, the public interests require that the traffic should not be rendered valueless to the producer, if the charges of the carrier have such an effect and can be reasonably reduced.
3. The requirement of the statute that all rates shall be reasonable and just involves a consideration of the commercial value of the traffic, and implies that rates should be so adjusted that producers of traffic as well as carriers may carry on their pursuits successfully, if practicable for both, and without injustice to the carrier. The public good requires what is plainly the spirit of the law, that the transportation interests are not alone to be considered, but that in the just exercise of regulation care should be taken that the lawful and necessary occupations of citizens are not unjustly burdened.
4. The complaint was that the defendants' charges for the transportation of specified perishable articles of truck-farming from stations on their lines of railroad to Jersey City and Philadelphia were excessive and unreasonable, and that the charges were higher for the shorter distances from their stations on the peninsula in Delaware and Maryland than for the longer distance from Norfolk, Va. It was found that the charges on certain articles specified from stations on the peninsula were excessive and a reduction was ordered. The reduced rates are, however, in many cases still considerably above the rates on the same articles from Norfolk, and the showing not being sufficient to enable the Commission to determine satisfactorily how far the lower Norfolk rates were justified by the differences in the conditions and circumstances, that subject is left for future consideration.

John P. Squire & Company v. The Michigan Central Railroad Company, The New York Central and Hudson River Railroad Company, The Boston and Albany Railroad Company.

1. The provision of the third section of the act to regulate commerce, prohibiting carriers from making or giving any undue or unreasonable preference or advantage to any particular person, firm, company, corporation, or locality, or any particular description of traffic, in any respect whatsoever, not only applies to relative rates on one description of traffic shipped to or from competing localities, but also to relative rates on differently described articles which are competitive in the same markets; and when carriers have established rates on articles of competitive traffic which are relatively reasonable and fair, they can not arbitrarily select particular articles of such traffic and materially raise or lower rates so established thereon without violating that provision of the statute.
2. The relation of rates ought to rest upon fixed and stable conditions. The fluctuations of markets are so frequent, especially as to competitive articles, and oftentimes unexpected, that commercial considerations alone would not furnish a sufficiently stable and fixed rule for guidance in making a rate that should remain substantially permanent through all fluctuations. The Commission does not, by a fixing of rates, attempt to overcome advantages which one producer or dealer may have in his geographical location, and to produce equality between competitors in all markets. It would be a useless task, even if it had the power, to attempt to accomplish such a result. The proper relation of rates for transportation of strictly competitive articles over the same line should be determined by reference to respective costs of service ascertained with all possible accuracy.
3. Violation by one carrier of principles laid down in this case as governing relative rates on competitive articles does not justify similar violations by its competitors.
4. The rates involved in this case are those on live hogs, live cattle, and the dressed products of each. These are found to be competitive commodities, and therefore entitled to relatively reasonable rates for transportation proportioned to each other according to the respective costs of service.

Jacob Shamberg v. The Delaware, Lackawanna and Western Railroad Company and The New York, Chicago and St. Louis Railroad Company.

A firm of cattle dealers in the city of New York, who procured their cattle on a large scale from Chicago and other Western points for domestic consumption as well as for export, make an arrangement with two interstate rail carriers, constituting a through line from Chicago to New York, that the said firm will, under the name of an express company of their own creation, furnish not less than 200 or more than 400 improved live-stock cars for the transportation of these cattle. For the rental of these improved stock cars the carriers pay this express company three-fourths of a cent per mile, whether loaded or empty. Extraordinary facilities and rights of way are given these cars to enable them to make a large mileage, and they make more than twice the mileage of ordinary stock cars. Besides this, the carriers pay 50 cents for the loading of each of said cars with cattle at the Union Stock Yards in Chicago,

for which no charge is made against the express company or the firm represented by it. In addition to this the carriers pay this firm yardage at the rate of $3\frac{1}{2}$ cents per hundred pounds on all their cattle, and upon all other cattle hauled for other firms in the care of this firm, owning the express company, to its yards at Pier 45, East River. This yardage charge is thus paid to the said firm by the said carriers for keeping their cattle in the firm's own yards after delivery of them to the firm, and then this yardage charge is deducted from the tariff rate charged by the carrier. The amount of these rebates to this firm in rates on these cattle by these carriers more than pays the entire cost of the improved stock cars within two years after operations are commenced with them, including the expenses of operation, leaving said firm owning the cars and still operating them with all these advantages and rates and facilities. *Held*—

1. This is an unlawful preference to the firm owning these improved stock cars and a violation of the act to regulate commerce.
2. It is an unlawful and unjust prejudice to other cattle firms and dealers in New York who are competitors in the business of said firm owning said improved stock cars.

The New York and Northern Railway Company v. The New York and New England Railroad Company, The Housatonic Railroad Company, and The New England Terminal Company.

1. *Discrimination between connecting lines.*—The respondent, which is a carrier by a railroad running through the State of Connecticut to a point in New York, had had for some time a through billing arrangement and an agreement upon through rates for traffic over its own line destined to New York City, with petitioner's road, which connected therewith at its New York terminus. This arrangement respondent broke up and declined to enter into any new one in its place.

The reason for breaking up the arrangement was that respondent had entered into a new arrangement with another road connecting with it at a point in Connecticut, whereby a New York City line was formed over which it was intended to take the business which formerly passed over respondent's line to petitioner's. It was not complained that petitioner's road was insolvent or not responsible for its contracts, or that the arrangement as before existing was unfair or unequal as between the parties thereto.

Such action of the respondent is held to be in violation of the second paragraph of section 3 of the act to regulate commerce, which requires that "every common carrier subject to the provisions of this act shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding, and delivering of passengers and property to and from their several lines and those connecting therewith, and shall not discriminate in their rates and charges between such connecting lines; but this shall not be construed as requiring any such common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business.

2. *Interest in the competing line.*—One reason assigned for breaking up the arrangement with petitioner was that respondent was joint owner with the road making the new line of a terminal company for delivery of freight in New York. This interest is not an ex-

cuse under the statute for discrimination against petitioner's line, and this whether the interest in the terminal company was large or small. Petitioner did not require or ask the services of the terminal company, but only to be allowed to continue as competitor for the business affected by the discrimination, and to offer its services to the public as such. It is found in the case that the public interest was injuriously affected by the discrimination.

3. *Terminal delivery by an agent.*—It is of no importance to the question involved that after freight carried by petitioner's road reached High Bridge, in New York, its delivery from that point to the pier, which constituted the terminus of the carriage, was made by an agent or contractor employed for the purpose. Petitioner, being carrier for the whole distance, was entitled to the privileges given by the statute accordingly.

Frederick P. Beaver and William D. Chamberlin, doing business under the firm name of Beaver & Company, *v.* The Pittsburg, Cincinnati and St. Louis Railway Company, The Cincinnati, Hamilton and Dayton Railroad Company, The New York, Lake Erie and Western Railroad Company, The Cleveland, Cincinnati, Chicago and St. Louis Railway Company, The Dayton, Fort Wayne and Chicago Railway Company, The Lake Shore and Michigan Southern Railway Company, The New York Central and Hudson River Railroad Company, The Pennsylvania Railroad Company, The Baltimore and Ohio Railroad Company, The Wabash Railroad Company, The Chicago, St. Paul and Kansas City Railway Company, The Atchison, Topeka and Santa Fé Railroad Company, The Missouri Pacific Railway Company, The Chicago, Burlington and Quincy Railroad Company, The Hannibal and St. Joseph Railroad Company, The Union Pacific Railway Company, and The Chicago and Northwestern Railway Company.

1. Where two kinds of soap are made use of for the same purposes, and are advertised and held out to the world as suited for like purposes, and are substantially equal in value, they should both for purposes of transportation and rating be placed in the same classification.
2. The soaps known as the Ivory Soap and the Grand Pa's Wonder Soap fall within this rule. Both are represented as suitable for laundry and also for toilet purposes, and both are used for those purposes. It would therefore be unjust discrimination to place one of them in a classification as toilet soap and the other in a much lower classification as laundry soap.

The James & Mayer Buggy Company *v.* The Cincinnati, New Orleans and Texas Pacific Railway Company, The Western and Atlantic Railroad Company, and The Georgia Railroad Company.

1. *Same rate for longer and shorter distances.*—Ordinarily longer distances warrant higher charges, but carriers may lawfully accept the same aggregate, though less profitable, rates for longer distances, provided such carriers do not "subject any particular person, company, firm, corporation or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage."
2. *Greater charge for shorter distances.*—The circumstances and conditions which make a greater charge for a shorter distance law-

ful relate to the nature and character of the transportation service rendered by the carrier over the same line to the longer and shorter distance points.

3. *Same*.—Water competition to justify the greater charge for the shorter distance must be competition in transportation to the longer-distance point and as to freight which, if not carried over the line on which it is located, would reach such destination by water transportation.
4. *Same*.—Goods shipped from Cincinnati, Ohio, to points in the State of Georgia are interstate traffic and all the roads forming a part of the line over which such goods are carried to their destination are engaged in interstate commerce and are subject to the act to regulate commerce. Where two or more roads forming a continuous connecting line between points in different States bill and carry interstate traffic through to certain stations on the last road forming such line, neither the roads together nor any one of them can evade the obligations of the fourth section of said act by declaring that as to such traffic destined to such stations on such terminal road it is a local carrier.

The Boston Fruit and Produce Exchange v. The New York and New England Railroad Company, The New York, New Haven and Hartford Railroad Company, The Pennsylvania Railroad Company, The Central Railroad Company of New Jersey, and The Lehigh Valley Railroad Company.

At the hearing of this case upon its merits, the Commission prescribed the freight rate upon peaches in carload lots, from New Jersey and the Delaware Peninsula, to Boston, Mass. One of the defendants filed a motion for rehearing, based upon the claim that some of the other defendants construed the decision of the Commission as justifying them in insisting that the freight charge prescribed should be divided among the carriers on a mileage basis merely:

Held, That the former decision of the Commission could not be fairly construed as justifying the claim that the single freight charge between the interstate points should be divided on a mileage basis merely; that many of the considerations which induced the fixing of an increased rate for the special service were peculiar to the Pennsylvania Railroad Company and in which the other carriers east of the Harlem River did not participate; that, under the pleadings and evidence in this case, the Commission could only prescribe a single rate for the service as an entirety, to be reasonably and fairly divided among the several carriers by themselves; that the motion for a rehearing be overruled.

Daniel Buchanan v. The Northern Pacific Railroad Company.

The rates on wheat and barley, of 50 and 56 cents per hundredweight, respectively, charged by defendant from Ritzville, Wash., to St. Paul, Minn., a distance of 1,576 miles, in view of the circumstance and conditions surrounding the traffic, held not to be unreasonable.

The Railroad Commission of Florida v. The Savannah, Florida and Western Railway Company, The Charleston and Savannah Railway Company, The North Eastern Railroad Company of South Carolina, The Wilmington, Columbia and Augusta Railroad Company, The

Wilmington and Weldon Railroad Company, The Seaboard and Roanoke Railroad Company, The Petersburg Railroad Company, The Richmond and Petersburg Railroad Company, The Richmond, Fredericksburg and Potomac Railroad Company, The Alexandria and Fredericksburg Railway Company, The Alexandria and Washington Railway Company, The Baltimore and Potomac Railroad Company, The Philadelphia, Wilmington and Baltimore Railroad Company, The Pennsylvania Railroad Company, The Florida Central and Peninsular Railroad Company, The Baltimore Steam Packet Company, The New York and Texas Steamship Company, The Clyde Steamship Company, The Ocean Steamship Company of Savannah.

1. The act to regulate commerce makes it the duty of this Commission "to investigate any complaint forwarded by the railroad commissioner or railroad commission of any State or Territory at the request of such commissioner or commission." The complaint in this case was brought by and in the name of the railroad commission of Florida, but the real parties in interest are large classes of growers, buyers, and shippers in the State of Florida. Since the complaint was filed the nominal complainant has ceased to exist. *Held*, That the repeal of the law creating the railroad commission of Florida could not operate as a withdrawal or dismissal of the complaint, that commission having been only an instrument for the transmission of the complaint to this commission, and having fully performed that function before an end was put to its existence. To abate or dismiss the proceeding on that ground would be to sacrifice substance to form in contravention of the spirit and letter of the act to regulate commerce and of the rules of courts of law in analogous cases. *Held further*, That under the provision of the act to regulate commerce authorizing this Commission to "institute any inquiry on its own motion in the same manner and to the same effect as though complaint had been made," neither complaint nor complainant is necessary to confer jurisdiction.
2. The defendants, the Clyde Steamship Company, the New York and Texas Steamship Company, and the Florida Central and Peninsular Railroad Company, are common carriers engaged in interstate commerce by arrangement as alleged in the complaint, and as such are subject to the jurisdiction of this Commission in respect thereto.
3. It does not appear that defendants willfully omitted or failed to notify the Commission and the public of the advance in rates complained of, or that anyone has sustained damage or injury by reason of such failure or omission, and therefore there is no case made out for an application by the Commission to a district attorney of the United States for the institution of a prosecution, and no ground for a recommendation of reparation for such injury.
4. While a complainant has no interest in the division the defendants make between themselves, and it does not determine what the charge to the public must be, yet the division is not without significance in determining what are reasonable rates for the whole distance on the lines in question.
5. Carriers making an advance in rates should be able to present a satisfactory justification of such advance, particularly when the old rates have been of many years' standing and the advance is great and the traffic affected is of large and constantly increasing volume and of vital importance to a large section of country.

6. Upon consideration of all the facts and circumstances in this case—*Held*, That the advance of 10 cents per box in rates on oranges from Florida points to New York and other northeastern markets, made by defendants on November 23, 1890, was without justification, and so far as it exceeded 5 cents per box was unreasonable and contrary to law; that defendants be notified and required to make reparation for injuries occasioned by such unreasonable and unlawful rates to the several persons entitled thereto, and, as such persons are not parties to this proceeding and the amounts wrongfully received from them, respectively, can not be ascertained from the evidence already taken, that this proceeding be continued for such further action or inquiry in that behalf as may become necessary.

Lehmann, Higginson and Company v. the Texas and Pacific Railway Company, The Missouri, Kansas and Texas Railway Company, and George A. Eddy and H. C. Cross, receivers of said Missouri, Kansas and Texas Railway Company.

1. A schedule of rates designated a "joint freight tariff" announcing a rate from New Orleans to Kansas City of 30 cents per hundred pounds of sugar was duly published and filed with the Commission by the New Orleans Traffic Association on behalf of the roads composing said association "and connections." The Texas and Pacific Railway Company, a member of said association, in its own behalf, issued and filed a supplemental sheet announcing said rate of 30 cents effective. The several companies composing said traffic association operate roads extending to and leading out of New Orleans, but none of them extending to Kansas City: *Held*, That a joint tariff of rates or charges must show on its face what carriers unite in establishing such joint tariff, and that the publication and filing of said schedule and supplemental rate sheet did not establish, as provided by section 6 of the act to regulate commerce, a joint tariff of rates and charges on a continuous line from New Orleans to Kansas City over the roads of said association, or of any one of them, in connection with any other road or roads. *Held further*, That where freight passes over a continuous line or route operated by more than one company on which no joint tariff of rates or charges has been established, the tariff of rates or charges is the sum of the established local rates or charges of the several companies operating such continuous line.
2. Several railway companies forming a continuous through line carried certain traffic to the terminal point at a 30-cent rate and for the same rate to an intermediate point, and to a point on a branch line more distant than the said intermediate but less distant than said terminal point they maintained a rate of 42 cents on the like traffic: *Held*, That the roads might lawfully maintain the same rate at the intermediate and terminal points, and that some higher rate might be maintained to the branch-line point off the direct through line without unjust discrimination. *Held further*, That as to the branch-line point the complainant was entitled to a refund of the amount paid in excess of a reasonable rate.

STATEMENT OF IMPORTANT POINTS DECIDED BY THE COMMISSION SINCE ITS ORGANIZATION.

ABSTRACT QUESTIONS.

OPINIONS ON.—The Commission will not express opinions on abstract questions; nor on questions presented by *ex parte* statements of fact; nor on questions of the construction of the statute when no controversy is pending.

In re Order of Railway Conductors.

In re Traders' and Travelers' Union.

In re Iowa Barb Steel Wire Company.

In re St. Louis Millers' Association.

In re Disabled Soldiers and Sailors.

Bishop *v.* Duval, receiver, etc.

Harris *v.* Duval, receiver, etc., *et al.*

Lincoln Board of Trade *v.* Union Pacific Railway Company *et al.*

Pennsylvania Company *v.* Louisville, New Albany and Chicago Railroad Company.

Chicago, St. Louis and Pittsburg Railroad Company *v.* Cleveland, Cincinnati, Chicago and St. Louis Railway Company.

American Wire Nail Company *v.* Cincinnati, New Orleans and Texas Pacific Railway Company *et al.*

Rawson *v.* Newport News and Mississippi Valley Company.

See Concession of Relief.

ACCOMMODATIONS.

Council v. Georgia Railroad Company.

Heard *v.* Georgia Railroad Company.

ACCOUNTS.

OF CARRIER, who is also a miner and shipper of coal.

Haddock *v.* Delaware, Lackawanna and Western Railroad Co.
See Unjust Discrimination.

ADVANCES IN RATES.

COMMISSION HAS NOT BEEN GIVEN POWER TO ORDER.—

In re Chicago, St. Paul, and Kansas City Railway Company.

Poughkeepsie Iron Company *v.* New York Central and Hudson River Railroad Company *et al.*

See Rates; Tariffs.

ADVANTAGE OF BUSINESS LOCATION.

See Location.

AFFIDAVITS.

FILED IN SUPPORT OF PETITION FOR REHEARING.—

Procter & Gamble *v.* Cincinnati, Hamilton and Dayton Railroad Company *et al.*

See Practice.

AGENT.

DUTIES IN ROUTING FREIGHT.—

Pankey *v.* Richmond and Danville Railroad Company.

TERMINAL DELIVERY BY.—

New York and Northern Railway Company *v.* New York and New England Railroad Company *et al.*

See Through Routes and Through Rates.

AGREEMENTS.

FOR THROUGH RATES.—

In re Application of F. W. Clark.

FOR TRACKAGE RIGHTS.—

Alford *v.* Chicago, Rock Island and Pacific Railway Company.

FOR USE OF IMPROVED STOCK CARS OWNED BY SHIPPERS.—

Shamberg *v.* Delaware, Lackawanna and Western Railway Company *et al.*

FOR THROUGH LINES.—

New York and Northern Railway Company *v.* New York and New England Railroad Company *et al.*

FOR THROUGH BILLING AND THROUGH RATES.—

Capehart *et al. v.* Louisville and Nashville Railroad Company *et al.*

Boston Fruit and Produce Exchange *v.* New York and New England Railroad Company *et al.*

See Through Routes and Through Rates; Contracts; Preference or Advantage.

AMENDMENT.

See Complaint.

ANSWER.

REPLICATION NOT ALLOWED.—

Oregon Short Line *v.* Northern Pacific Railroad Company.

ARRANGEMENT.

See Through Routes and Through Rates; Common Control; Management or Arrangement; Agreement; Contracts.

BARRELS.

TRANSPORTATION OF PETROLEUM OILS IN.—

Rice *v.* Louisville and Nashville Railroad Company.

Nicolai *v.* Pennsylvania Railroad Company.

In re Relative Tank and Barrel Rates in Oil.

Scofield *v.* Lake Shore and Michigan Southern Railway Company.

Rice, Robinson & Witherop *v.* Western New York and Pennsylvania Railroad Company.

See Unjust Discrimination.

BILLING OF FREIGHT.

DUTIES OF CARRIERS IN REGARD TO.—

Pankey *v.* Richmond and Danville Railroad Company *et al.*

BOOKS, PAPERS, AND DOCUMENTS.

COMPULSORY PRODUCTION OF.—

Rice *v.* Cincinnati, Washington and Baltimore Railroad Company *et al.*, *in re* Application of Petitioner.

Haddock *v.* Delaware, Lackawanna and Western Railroad Company.

In re Alleged Excessive Freight Rates and Charges on Food Products.

See Interstate Commerce Commission; Practice; Evidence; Carriers.

BONDED DEBT.

In re Alleged Excessive Freight Rates and Charges on Food Products.

See Reasonable Rates.

BRIDGE CHARGES.

McMorran *et al. v.* Grand Trunk Railway Company of Canada *et al.*
See Reasonable Rates.

BULK OF TRAFFIC.

See Traffic; Classification.

BURDEN OF PROOF.

WHEN ON COMPLAINANT.—

Fulton *v.* Chicago, St. Paul, Minneapolis and Omaha Railway Company.

Harding *v.* Same Company.

Holbrook *v.* St. Paul, Minneapolis and Manitoba Railroad Company.

Jackson *v.* St. Louis, Arkansas and Texas Railway Company.

Leonard *v.* Union Pacific Railway Company.

Howell *v.* New York, Lake Erie and Western Railroad Company *et al.*

WHEN ON CARRIER.—

In re Louisville and Nashville Railroad Company.

Spartanburg Board of Trade *v.* Richmond and Danville Railroad Company *et al.*

Logan *et al. v.* Chicago and Northwestern Railway Company.

McMorran *v.* Grand Trunk Railway Company of Canada *et al.*

San Bernardino Board of Trade *v.* Atchison, Topeka and Santa Fé Railroad Company *et al.*

Rice, Robinson & Witherop *v.* Western New York and Pennsylvania Railroad Company.

ON PETITION FOR REHEARING.—

Proctor & Gamble *v.* Cincinnati, Hamilton and Dayton Railroad Company *et al.*

BUSINESS LOCATION.

See Location.

CANADIAN COMPETITION.

Third Annual Report of the Interstate Commerce Commission.
See Competition.

CAPITAL STOCK.

In re Alleged Excessive Freight Rates and Charges on Food Products.
See Reasonable Rates.

CAR-LOAD RATES.

ON LIVE CATTLE.—Prescribed minimum rate for a car load and a charge by the 100 pounds in proportion to the car-lot rate for any excess over the minimum *Held* not to be unlawful.

Leonard & Chappell *v.* Chicago and Alton Railroad Company.

CAR LOADS AND LESS THAN CAR LOADS.

Thurber *et al.* *v.* New York Central and Hudson River Railroad Company *et al.*

Leggett & Co. *v.* New York Central and Hudson River Railroad Company *et al.*

Greene *v.* New York Central and Hudson River Railroad Company *et al.*

CAR MILEAGE.

ON TANK CARS.—

Rice *v.* Louisville and Nashville Railroad Company.

Scofield *et al.* *v.* Lake Shore and Michigan Southern Railway Company.

Rice, Robinson & Witherop *v.* Western New York and Pennsylvania Railroad Company.

INVESTIGATION CONCERNING.—

Third Annual Report of Interstate Commerce Commission.

ON DIFFERENT CLASSES OF CARS. *Ib.*WHEN BURDENSOME. *Ib.*

WHEN PAID TO SHIPPERS.—Only such allowance for the use of cars should be made to shippers as to permit no advantage to the private owner of cars who is also a shipper, nor afford a margin for paying rebates to other shippers. *Ib.*

ON CARS PRIVATELY OWNED.—Legislation regulating the payment of, recommended. *Ib.*

NOT TO BE USED AS A DEVICE TO EVADE MAKING EQUAL CHARGES.—

Rice, Robinson & Witherop *v.* Western New York and Pennsylvania Railroad Company.

PAYMENT OF UNLAWFUL REBATES IN EXCESSIVE CAR MILEAGE.—

Shamburg *v.* Delaware, Lackawanna and Western Railroad Company *et al.*

See Unjust Discrimination; Preference or Advantage.

CARRIERS.

SUBJECT TO THE ACT.—The fact that the owner of merchandise, which is offered to a carrier for transportation from one point to another in the same State, intends to have it further transported by a second carrier into another State, does not make such first transportation interstate commerce or render the carrier subject to the control of the Commission in respect to it, even though such first carrier may be informed of the ultimate destination of the merchandise.

Missouri and Illinois Railroad Tie and Lumber Company *v.* Cape Girardeau and Southwestern Railway Company.

A State railroad used and operated as a means of conducting interstate traffic in coal by companies owning connecting interstate roads is one of the facilities and instrumentalities of interstate commerce, and the carriers using it are subject to the provisions of the act to regulate commerce.

Heck & Petree *v.* East Tennessee, Virginia and Georgia Railway Company *et al.*

Certain fruit traffic originates in the State of New Jersey and is destined to the city of New York; but the delivery by defendants to the consignees is made at Jersey City, in New Jersey, and defendants' rates are made not to New York but to Jersey City. Under these facts the traffic, so far as defendants conduct it, is not interstate, and the Commission has no jurisdiction over their rates.

New Jersey Fruit Exchange *v.* Central Railroad of New Jersey *et al.*

When a State carrier engages in interstate commerce it becomes a national instrumentality for the purposes of such commerce, and is subject to regulations prescribed by the national authority. It can not limit its obligations in that business, but must serve the business offered impartially and without preference or discrimination.

Mattingly *v.* Pennsylvania Company.

The common carriers named and referred to in the last clause of section 3 of the act to regulate commerce are such alone as are subject to the provisions of that statute.

Capehart *et al.* *v.* Louisville and Nashville Railroad Company *et al.*

The words "common control, management, and arrangement," as found in the first section of the act to regulate commerce, defined and applied to the special facts of the case.

Boston Fruit and Produce Exchange *v.* New York and New England Railroad Company *et al.*

Where two or more roads forming a continuous connecting line between points in different States bill and carry interstate traffic through to certain stations on the last road forming such line, neither the roads together nor any one of them can evade the obligations of the fourth section of said act by declaring that as to such traffic destined to such stations on such terminal road it is a local carrier.

James & Mayer Buggy Company *v.* Cincinnati, New Orleans and Texas Pacific Railway Company *et al.*

The defendants, the Clyde Steamship Company, the New York and Texas Steamship Company, and the Florida Central and Peninsular Railroad Company are common carriers engaged in interstate commerce by arrangement as alleged in the complaint, and as such are subject to the jurisdiction of this Commission in respect thereto.

The Railroad Commission of Florida *v.* the Savannah, Florida and Western Railway Company *et al.*

PRIVILEGES GRANTED BY.—Carrier must decide in the first instance what privileges he may or will grant under the act to regulate commerce, and if it is then complained that in doing so the act is violated, the Commission will have jurisdiction on complaint being filed for such violation.

In re Order of Railway Conductors.

In re Traders' and Travelers' Union.

In re Iowa Barbed Steel Wire Company.

In re St. Louis Millers' Association.

In re Disabled Soldiers and Sailors.

PROTECTION AGAINST UNREASONABLY LOW RATES.—The act to regulate commerce assumes that the carriers, in their power to make rates, have ample remedy to protect against rates which are unreasonably low.

In re Chicago, St. Paul and Kansas City Railway Company.

RIGHTS OF SHIPPERS.—Under the act to regulate commerce shippers are not to be put in a position of subserviency to common carriers, nor required to ask for rates, but are entitled to equal and open rates at all times. (*Ib.*)

IMMIGRANT TRANSPORTATION.—A railroad company which transports immigrants in unfit cars will be required to provide better accommodations, and to ascertain their fitness the Commission will make its own inspection.

Savery & Co. v. New York Central and Hudson River Railroad Company et al.

PROSECUTION OF.—A carrier which has conformed to the ruling of the Commission should not be prosecuted for alleged violation of law in that respect which occurred before such ruling was made and under a construction of the law then approved by the carriers' counsel.

Slater v. Northern Pacific Railroad Company.

EXCESSIVE RATES.—The fact that a road earns a little more than operating expenses is not to be overlooked, but it can not be made to justify grossly excessive rates. Wherever there are more roads than the business at fair rates will remunerate, they must rely upon future earnings for the return of investments and profits.

New Orleans Cotton Exchange v. Cincinnati, New Orleans and Texas Pacific Railway Company et al.

DUTY TO ACCEPT ALL ORDINARY TRAFFIC.—Common carriers are under obligation to take all descriptions of ordinary traffic from all points and it is right that the rates should be known and announced publicly in advance of the offering of traffic.

In re Tariffs of Transcontinental Lines.

DUTY TO PUBLIC.—A railroad company is under special obligations to give reasonable rates for its local business, but there are many influences which may affect through rates while not bearing upon local rates at all; or, if at all, in less degree.

Lippman & Co. v. Illinois Central Railroad Company.

Obligation of common carriers to transport freight arises upon tender of same for transportation in the usual way, without any special agreements. Compensation for the service secured by a lien upon the goods, except when payment in advance is made.

Riddle, Dean & Co. v. New York, Lake Erie and Western Railroad Company.

Regular patrons not entitled to preference in the use of equipment of common carriers. The public must be justly and equally served. (*Ib.*)

DUTY TO PUBLIC.—Continued.

The duties of carriers in respect to short branch roads used as instrumentalities of interstate commerce stated.

Heck & Petree v. East Tennessee, Virginia and Georgia Railway *et al.*

A common carrier should be sensitive to the least suspicion of unfairness. The purchase of his services at a stated price, equal to all, should be a matter of course with every shipper.

In re Underbilling.

DUTY OF, IN PASSENGER TRANSPORTATION.—Carriers must furnish equal comforts, accommodations, and protection to passengers without regard to race, color, or sex.

Heard v. Georgia Railroad Company.

DUTY OF, IN FILING AND PUBLICATION OF JOINT THROUGH EXPORT RATES.—New York Produce Exchange v. New York Central and Hudson River Railroad Company *et al.*

DUTY OF, TO EXHIBIT BOOKS AND RECORDS.—The books of the defendant carriers as to rates charged, facilities furnished, and general movements of freight, being in the nature of semipublic records, to any extent that they can fairly and justly save time, labor, or expense to complainant, or to their companies, by giving to him in response to any calls he may make, statements of facts shown by their books, records, or files which may probably have importance on the hearing, the officers and agents of the defendant carriers under the direction of defendants, ought to give such statements, and ought to do so as promptly as may be found reasonably practicable.

Rice v. Cincinnati, Washington and Baltimore Railroad Company *et al.*

Rice v. Louisville and Nashville Railroad Company.

Much unnecessary controversy, inconvenience, and delay might well be avoided in the first instance, as well as in subsequent stages of proceedings, if carriers would exhibit, without technical objection, what their books show in reference to a transaction in question to anyone who calls for the information in good faith, believing, though perhaps erroneously, that it is, or may be, important to his interests, and when the application is seasonably and properly made, with a due regard for the convenience of the carriers' agents and officers; and the instances are numerous in which it would put an end to the controversy, and in many others that the party would not then trouble the carrier for the production of the books. (*Ib.*)

DUTY OF, IN CLASSIFYING PROPERTY.—Carriers are not at liberty to classify property as a basis of transportation rates and impose charges for its carriage with exclusive regard to their own interests, but they must respect the interests of those who may have occasion to employ their services, and conform their charges to the rules of relative equality and justice which the act prescribes.

Thurber *et al.* v. New York Central and Hudson River Railroad Company *et al.*

DUTIES OF, IN ROUTING FREIGHT.—

Pankey *v.* Richmond and Danville Railroad Company *et al.*

See Books; Papers and Documents; Competition; Evidence; Lake and Rail transportation; Long and Short Haul Clause; Practice; Preference and Advantage; Reasonable Rates; Relative Rates; Subpoena duces tecum; Unjust Discrimination; Water and Rail Lines; Water Competition; Water Transportation; Facilities of Traffic; Joint Rates; Joint Tariffs; Live Stock.

DUTY OF, TO PUBLIC.—Rates can not be arbitrarily changed in the mere discretion of a carrier. They are to be equitably adjusted with regard to the public interests as well as the carriers.

Lehmann, Higginson and Company *v.* Southern Pacific Company *et al.*

Charges for transportation service should have reasonable relation to the cost of production and value of the service to the producer and shipper.

In re Alleged Excessive Freight Rates and Charges on Food Products.

Delaware State Grange, etc., *v.* New York, Philadelphia and Norfolk Railroad Company *et al.*

When a carrier receives low rates from some patrons at some localities, it accepts the legal obligation to give impartial services to other patrons and at other localities that sustain similar relations to the traffic.

Manufacturers' and Jobbers' Union of Mankato *v.* Minneapolis and St. Louis Railway Company *et al.*

A carrier's duty to the public requires that its service must be alike to all who are situated alike.

Rice, Robinson & Witherop *v.* Western New York and Pennsylvania Railroad Company.

DUTY OF, TO FURNISH CAR EQUIPMENT.—*Ib.*

Scofield *et al.* *v.* Lake Shore and Michigan Southern Railway Company.

DUTY OF, IN CARRYING PETROLEUM OIL.—*Ib.*

INSPECTION OF FREIGHT CARS.—After a freight tank car has just returned from one long journey it is the duty of the carrier before permitting it to start out loaded on another distant run, in which the lives and safety of brakemen, trainmen, and the property of the shipper will be involved, to have such car carefully inspected by a competent inspector, in order to ascertain whether it is in a safe condition for such service.

Michigan Congress Water Company *v.* Chicago and Grand Trunk Railway Company.

DECLARATION OF AGENTS.—Unauthorized declarations of a depot agent, implying that a tank car which has just returned from a long journey is in a safe condition to be loaded and started on another long run, are not binding upon the railroad company. (*Ib.*)

FRAMING OF TARIFFS.—The carriers themselves should devise the methods by which their tariffs should be framed in conformity to the law.

In re Tariffs of the Columbus and Western Railway Company.

PRODUCTION OF BOOKS, PAPERS, AND DOCUMENTS BY.—

Rice *v.* Cincinnati, Washington and Baltimore Railroad Company *et al.*, *in re* Application of Petitioner.

Haddock *v.* Delaware, Lackawanna and Western Railroad Company.

WHEN OVERCHARGE MADE THROUGH MISAPPREHENSION MAY BE RETURNED.—

Sanger v. Southern Pacific Company et al.

WHEN FOREIGN CARRIERS ARE SUBJECT TO THE ACT.—

In re Acts and Doings of the Grand Trunk Railway Company of Canada.

APPLICATIONS OF, FOR THROUGH ROUTES AND THROUGH RATES.—

Little Rock and Memphis Railroad Company v. East Tennessee, Virginia and Georgia Railroad Company et al.

FOREIGN.—Engaged in the transportation of passengers or property for a continuous carriage or shipment from a place in the United States to a place in an adjacent foreign country are subject to the act.

In re Acts and Doings of Grand Trunk Railway Company of Canada.

METHODS OF, IN SHIPMENTS OF FREIGHT.—

Third Annual Report of Interstate Commerce Commission.

RECORDS OF. (*Ib.*)

BURDEN IS ON CARRIERS TO JUSTIFY APPARENTLY DISPROPORTIONATE OR RELATIVELY UNEQUAL RATES.—

McMorran et al. v. Grand Trunk Railway of Canada et al.

BURDEN IS ON CARRIER TO JUSTIFY DIFFERENT RATES ON ARTICLES CLASSIFIED ALIKE. (*Ib.*)

COMPLAINTS AGAINST, WHEN INSUFFICIENT.—

White v. Michigan Central Railroad Company et al.

COMPETITION BY CANADIAN.—

Third Annual Report of Interstate Commerce Commission.

LAKE AND RAIL.—

Third Annual Report of Interstate Commerce Commission.

BY WATER.—Extension of the law to make it apply to common carriers by water recommended. (*Ib.*)

WHEN NOT ENTITLED TO HAVE THROUGH SHIPMENTS PROTECTED AS AGAINST COMPETITORS.—

Chicago, Rock Island and Pacific Railway Company v. Chicago and Alton Railroad Company.

RESPONSIBILITY OF, IN PASSENGER TRANSPORTATION.—The extraordinary liability imposed by law upon a railroad company as a common carrier for the sufficiency and safety of its passenger cars and the competency of its employes in operating such cars is a highly important protection to the public, but such company might very reasonably claim that it was not responsible for a passenger car of a private car company, or the consequences of that passenger car being transported as part of its train in causing a wreck, collision, or delay, when it had no volition in accepting or rejecting such car, but was forced to transport it by order of a civil tribunal.

Worcester Excursion Car Company v. Pennsylvania Railroad Company.

The interest of the public in a matter of this kind is vitally important, and lies in the direction of holding every common carrier by rail to the strictest responsibility in furnishing safe, suitable, and sufficient car equipment for the transportation of persons over its line: and the lawmaking power, in enacting the act to regulate commerce, has not undertaken to divide this responsibility with the carrier in the selection of its cars. (*Ib.*)

SELECTION OF CARS BY.—It would be directly at war with the rights and safety of the traveling public, as well as of the railroad company, if the line of the carrier should become an arena over which it should be compelled to make a contract of some sort with every car company or inventor of cars, and transport the public in trains of which such cars were part.
(*Ib.*)

WHEN FREE CARTAGE OF FREIGHTS IS UNLAWFUL.—

Stone & Carten v. Detroit, Grand Haven and Milwaukee Railway Company.

SEPARATE ACCOUNTS BY CARRIER WHO IS A MINER AND SHIPPER AS WELL AS A CARRIER OF COAL.—

Haddock v. Delaware, Lackawanna and Western Railroad Company.

MANUFACTURERS' DESCRIPTION.—Carriers may accept manufacturers' description to the public for purposes of classification and rates.

Warner v. New York Central and Hudson River Railroad Company *et al.*

Andrews Soap Company v. Pittsburgh, Cincinnati and St. Louis Railway Company *et al.*

Beaver & Company v. Pittsburgh, Cincinnati and St. Louis Railway Company *et al.*

TRAFFIC NOT TO BE CARRIED AT A LOSS.—

Lehmann, Higginson & Company v. Southern Pacific Company *et al.*

In re Alleged Excessive Freight Rates and Charges on Food Products.

FILING OF RATE SHEETS RAISES NO PRESUMPTION AS TO LEGALITY OF RATES.—

San Bernardino Board of Trade v. Atchison, Topeka and Santa Fé Railroad Company *et al.*

EQUALIZATION OF PROFITS OVER DIFFERENT DIVISIONS OF LINE, WHEN UNLAWFUL.—*Ib.*

RISK OF TRANSPORTING LIVE HOGS.—

Board of Trade of the City of Chicago v. Chicago and Alton Railroad Company *et al.*

INFORMAL COMPLAINTS AGAINST.—

McMillan & Company v. Western Classification Committee.

CONCERNED IN MATTERS COMPLAINED OF SHOULD BE MADE PARTIES DEFENDANT.—*Ib.*

ARRANGEMENTS FOR THROUGH LINES.—

Capehart *et al.* v. Louisville and Nashville Railroad Company, *et al.*

Boston Fruit and Produce Exchange v. New York and New England Railroad Company *et al.*

New York and Northern Railway Company v. New York and New England Railroad Company *et al.*

DISCRIMINATION BETWEEN CONNECTING LINES.—

New York and Northern Railway Company v. New York and New England Railroad Company *et al.*

INTEREST OF, IN CONNECTING LINES.—*Ib.*

TERMINAL DELIVERY BY AGENT.—*Ib.*

CONTRACTS MADE WITH SHIPPERS PRIOR TO ACT.—

Haddock v. Delaware, Lackawanna and Western Railroad Company.

WHO ARE ALSO MINERS AND SHIPPERS OF COAL; SEPARATE TRANSPORTATION ACCOUNTS.—*Ib.*

PRODUCTION OF DOCUMENTARY EVIDENCE BY.—*Ib.*

POWER OF, TO MAKE COMMODITY AND SPECIAL CLASS RATES.—The power of interstate carriers to make commodity class rates and special class rates to meet the circumstances and conditions of traffic along their lines recognized and defined.

New York Board of Trade and Transportation *et al.* v. Pennsylvania Railroad Company *et al.*

RATES LONG CONTINUED PRESUMED PROFITABLE.—

In re Alleged Excessive Freight Rates and Charges on Food Products.

Coxe Brothers & Company v. Lehigh Valley Railroad Company.

OWNER OF CAPITAL STOCK OF COAL COMPANY.

Coxe Brothers & Company v. Lehigh Valley Railroad Company.

SPECIAL SERVICE IN TRANSPORTATION OF PERISHABLE FREIGHT.—

Boston Fruit and Produce Exchange v. New York and New England Railroad Company.

Delaware State Grange, etc., v. New York, Philadelphia and Norfolk Railroad Company *et al.*

ADJUSTMENT OF RELATIVE RATES.—

Squire & Company v. Michigan Central Railroad Company *et al.*

UNLAWFUL REBATES FROM RATES ON LIVE CATTLE.—

Shamberg v. Delaware, Lackawanna and Western Railroad Company *et al.*

UNLAWFUL REBATES FROM RATES BY PAYMENT OF YARDAGE CHARGES.—*Ib.*

REFUSAL TO FURNISH IMPROVED LIVE STOCK CARS IMPARTIALLY.—*Ib.*

WHEN IMPROVIDENT MANAGEMENT BECOMES UNLAWFUL.—*Ib.*

NOT PARTIES, WHEN CITED IN AFTER DECISION.—

Hamilton & Brown v. Chattanooga, Rome and Columbus Railroad Company *et al.*

COMBINATION RATES CRITICISED.—*Ib.*

MUST POST SCHEDULES OF RATES ON EXPORT AS WELL AS DOMESTIC TRAFFIC.—

New Orleans Cotton Exchange v. Louisville, New Orleans and Texas Railway Company.

See Burden of Proof; Cars; Classification; Competition; Evidence; Interstate Commerce; Interstate Commerce Commission; Local Rates; Long and Short Haul Clause; Practice; Preference or Advantage; Rates; Reasonable Rates; Relative Rates; Traffic; Through Rates; Through Routes and Through Rates; Unjust Discrimination; Water Competition; Water and Rail Lines.

CARS.

SEPARATE FOR WHITE AND COLORED PASSENGERS.—

Heard v. Georgia Railroad Company.

RETURN LOADS FOR EMPTY.—

James & Abbott v. East Tennessee, Virginia and Georgia Railway Company *et al.*

Lehmann, Higginson & Co. v. Southern Pacific Company *et al.*

OWNED BY SHIPPERS OR OTHER PARTIES.—A railroad company voluntarily using a car in its business, no matter how obtained, in legal contemplation makes the car its own for all purposes of rates and of safe carriage. It can not escape its duty to charge only reasonable rates, or its liability for the safe carriage of persons or property, on the ground that its cars

OWNED BY SHIPPERS OR OTHER PARTIES.—Continued.

may not be its own property, or that a high rate may be paid for their use.

Third Annual Report of Interstate Commerce Commission.

SHOULD BE OWNED BY CARRIERS. (*Ib.*)

HEATING OF PASSENGER.—

Third Annual Report of Interstate Commerce Commission.

FLAT AND BOX CARS IN COTTON TRANSPORTATION.—

New Orleans Cotton Exchange *v.* Illinois Central Railroad Company *et al.*

New Orleans Cotton Exchange *v.* Cincinnati, New Orleans and Texas Pacific Railway Company *et al.*

SELECTION OF.—A railroad company may acquire cars by construction, by purchase, or by contract for their use, and no one has the power to compel a railroad company to select among these several modes or to contract with all comers.

Worcester Excursion Car Company *v.* Pennsylvania Railroad Company.

BOX.—

Rice, Robinson & Witherop *v.* Western New York and Pennsylvania Railroad Company.

TANK.—

Rice *v.* Louisville and Nashville Railroad Company.

Scofield *et al.* *v.* Lake Shore and Michigan Southern Railway Company.

Rice, Robinson & Witherop *v.* Western New York and Pennsylvania Railroad Company.

OWNED BY SHIPPERS. (*Ib.*)

Shamberg *v.* Delaware, Lackawanna and Western Railroad Company *et al.*

DUTY OF CARRIERS TO FURNISH CARS CAN NOT BE TRANSFERRED TO NOR REQUIRED OF SHIPPERS.—

Rice, Robinson & Witherop *v.* Western New York and Pennsylvania Railroad Company.

INABILITY TO FURNISH DOES NOT EXCUSE UNJUST DISCRIMINATION. (*Ib.*)

LIVE STOCK.—

Burton Stock Car Co. *v.* Chicago, Burlington and Quincy Railroad Company.

Leonard *v.* Chicago and Alton Railroad Company.

Chappell *v.* Chicago and Alton Railroad Company.

Board of Trade of the City of Chicago *v.* Chicago and Alton Railroad Company *et al.*

Shamberg *v.* Delaware, Lackawanna and Western Railroad Company *et al.*

SPECIAL EQUIPMENT FOR PERISHABLE FREIGHT.—

Boston Fruit and Produce Exchange *v.* New York and New England Railroad Company *et al.*

Delaware State Grange, etc. *v.* New York, Philadelphia and Norfolk Railroad Company *et al.*

See Car Mileage; Long and Short Haul Clause; Preference or Advantage; Reasonable Rates; Relative Rates; Return Loads.

CARTAGE.

FREE.—

Third Annual Report of Interstate Commerce Commission.

Stone *et al.* *v.* Detroit, Grand Haven and Milwaukee Railway Company.

FREE.—Continued.

See Free Cartage of Freights; Long and Short Haul Clause; Rebates; Unjust Discrimination.

CATTLE.

Leonard *v.* Chicago and Alton Railroad Company.

Chappell *v.* Chicago and Alton Railroad Company.

See Live Stock.

CHARACTER OF TRAFFIC.

See Traffic.

CIRCUMSTANCES AND CONDITIONS.

WHAT MAY BE DISSIMILAR.—

In re Louisville and Nashville Railroad Company.

Allen *v.* Louisville, New Albany and Chicago Railway Company.

Business Men's Association of the State of Minnesota *v.* Chicago, St. Paul, Minneapolis and Omaha Railway Company.

Rice, Robinson & Witherop *v.* Western New York and Pennsylvania Railroad Company.

Rend *v.* Chicago and North-Western Railway Company.

Logan *et al.* *v.* Chicago and North-Western Railway Company.

Business Men's Association of the State of Minnesota *v.* Chicago and North-Western Railway Company.

Thurber *et al.* *v.* New York Central and Hudson River Railroad Company *et al.*

Leggett & Co. *v.* New York Central and Hudson River Railroad Company *et al.*

Greene *v.* New York Central and Hudson River Railroad Company *et al.*

New Orleans Cotton Exchange *v.* Illinois Central Railroad Company.

New Orleans Cotton Exchange *v.* Cincinnati, New Orleans and Texas Pacific Railway Company *et al.*

Rice *v.* The Atchison, Topeka and Santa Fé Railroad Company *et al.*

King & Co. *v.* New York, New Haven and Hartford Railroad Company *et al.*

Lehmann, Higginson & Co. *v.* Southern Pacific Company *et al.*

Rice *v.* Atchison, Topeka and Santa Fé Railroad Company *et al.*

King & Co. *v.* New York, New Haven and Hartford Railroad Company *et al.*

Kauffman Milling Company *v.* Missouri Pacific Railway Company *et al.*

WHAT DO NOT CONSTITUTE DISSIMILAR.—

Vermont State Grange *v.* Boston and Lowell Railroad Company *et al.*

Harwell *v.* Columbus and Western Railway Company.

Business Men's Association of the State of Minnesota *v.* Chicago, St. Paul, Minneapolis and Omaha Railway Company.

In re Chicago, St. Paul and Kansas City Railway Company.

In the Matter of the Tariffs and Classifications of the Atlanta and West Point Railroad Company *et al.*

WHAT DO NOT CONSTITUTE DISSIMILAR.—Continued.

James & Abbott *v.* East Tennessee, Virginia and Georgia Railway Company *et al.*

In re Tariffs Columbus and Western Railway Company.

San Bernardino Board of Trade *v.* Atchison, Topeka and Santa Fé Railroad Company *et al.*

Stone & Carten *v.* Detroit, Grand Haven and Milwaukee Railway Company.

Manufacturers' and Jobbers' Union of Mankato *v.* Minneapolis and St. Louis Railway Company *et al.*

San Bernardino Board of Trade *v.* Atchison, Topeka and Santa Fé Railroad Company *et al.*

Rice, Robinson & Witherop *v.* Western New York and Pennsylvania Railroad Company.

New York Board of Trade and Transportation *et al. v.* Pennsylvania Railroad Company *et al.*

James & Mayer Buggy Company *v.* Cincinnati, New Orleans and Texas Pacific Railway Company *et al.*

TO WHAT THEY MUST RELATE TO CONSTITUTE EXCEPTION UNDER FOURTH SECTION.—

James & Mayer Buggy Company *v.* Cincinnati, New Orleans and Texas Pacific Railway Company *et al.*

See Long and Short Haul Clause, Relative Rates, Unjust Discrimination.

CLASSIFICATION.

PRINCIPLES CONTROLLING.—

First Annual Report of Interstate Commerce Commission.

DIFFERENCES IN CLASSIFICATION MAY VIOLATE THE FOURTH SECTION.—Violation of the fourth section of the act can be accomplished by differences in classification as well as by differences in tariff rates.

Martin *v.* Southern Pacific Company *et al.*

MIXED CAR-LOAD LOTS.—Mixed car-load lots should be uniformly classified, and immediate adoption of a reasonable rule recommended. (*Ib.*)

ANALOGOUS ARTICLES ENTITLED TO SAME.—Classification of dried fruits and raisins in different classes work injustice to shippers. (*Ib.*)

Under a classification which puts lumber in car-load lots in the sixth class, and unfinished wagon materials in the fifth class, it is held that hub-blocks which are prepared as such to be sold to the manufactures of hubs and of wheeled vehicles, but upon which only so much labor has been expended as is needful to put them in condition for seasoning, are to be regarded as the raw material upon which the process of manufacture of hubs is not yet begun, just as boards are the raw material from which wagon boxes are made. The blocks belong, therefore, when not otherwise specified in the classification sheet, with lumber instead of with unfinished wagon materials.

Hurlburt *v.* Lake Shore and Michigan Southern Railroad Company.

Hurlburt *v.* Pennsylvania Railroad Company.

Classification of railroad ties should correspond with that of other rough lumber. Comparisons stated, and held that the raising of same from sixth to fifth class in the official classification was unjustifiable.

Reynolds *v.* Western New York and Pennsylvania Railroad Company.

DISTINCTIONS IN.—A statement of the grounds of differences in classifications of articles of freight of railroad companies, and a discussion of those which are involved with reference to pearline and common soap by which the conclusion of the Commission was reached that the classification of pearline should be reduced.

Pyle & Sons v. East Tennessee, Virginia and Georgia Railway Company.

FRAUDS IN.—Fraudulent classification as a method of obtaining reduced rates, considered.

In re Underbilling.

CONSTRUCTION.—A classification sheet is put before the public for general information; it is supposed to be expressed in plain terms so that the ordinary business man can understand it, and, in connection with the rate sheets, determine for himself what he can be lawfully charged for transportation. The persons who prepare the classification have no more authority to construe it than anybody else, and they must leave it to speak for itself.

Hurlburt v. Lake Shore and Michigan Southern Railway Company.

Hurlburt v. Pennsylvania Railroad Company.

ARTICLES CLASSIFIED ALIKE ARE PRESUMPTIVELY ENTITLED TO EQUAL RATES.—

McMorran et al. v. Grand Trunk Railway Company of Canada et al.

Rice, Robinson & Witherop v. The Western New York and Pennsylvania Railroad Company.

FORM OF.—Form of tariffs and classifications in use criticised and requirements of statute stated in respect thereto.

In re Tariffs and Classifications of Atlanta and West Point Railroad Company et al.

UNIFORM.—What has been done toward establishing a uniform classification.

Third Annual Report of Interstate Commerce Commission.

A confusion created or maintained by the carrier for its own purposes can not be used to justify a disobedience of the law, and if changes in classification methods are necessary in order to conform to the requirements of the statute, such changes should be made without hesitation. The rearrangement of rates and the simplification of classification are matters which the carriers should undertake and carry forward for themselves.

In re Tariffs and Classifications of the Atlanta and West Point Railroad Company et al.

Where all the interstate carriers of the country, working through a committee selected by them for that purpose, are endeavoring to reach a uniform classification of freight instead of having the various different and conflicting classification that exist, it being apparent to the Commission that such uniform classification is a result that is greatly in the public interests, as well as in the interest of the carriers, and that has often been recommended by the Commission to the carriers, the Commission will not embarrass, delay, or retard the carriers in this work by instituting investigations of its own, under the 12th section of the act to regulate commerce involving the classification of a few enumerated articles transported from and to an extended area of country; but unless a formal complaint is made against the carriers in regard to such matter,

UNIFORM.—Continued.

and a hearing of it pressed to a determination by the parties, the Commission will wait a reasonable time to see the result of the effort being made by the carriers in their efforts to arrive at a uniform classification.

McMillan & Co. v. The Western Classification Committee.

Questions that may arise under a proposed uniform classification reserved.

Kauffman Milling Co. v. Missouri Pacific Railway Company et al.

WHEN UNLAWFUL.—When classifications in use are complicated and involved containing many exceptions and variations; when different classifications are used upon the road of the same carrier for shipment of the same commodity to neighboring points; when two or more classifications are employed upon the same shipment in fixing a so-called combination rate upon the line of the same carrier or of two or more connecting carriers, they are not in conformity with the statute. (*Ib.*)

BULK AND VALUE OF FREIGHT.—A difference in the bulk and value of lumber does not justify a greater charge for the shorter distance when the carriers in their published rate sheets put the lumber in the same class and at the same rate.

James & Abbott v. East Tennessee, Virginia and Georgia Railway Company et al.

OF CORN AND CORN PRODUCTS.—A change in the classification whereby the discrimination was made between the rate on corn and its direct products which subjected persons in a locality engaged in the business of manufacturing corn into its direct products, or of selling the same, to unreasonable prejudice or disadvantage, and was without necessity or advantage to the carrier, or any reason founded on the character or condition of the traffic, was held to be unlawful, notwithstanding the new rate on corn was open to all persons equally and with equal service.

Bates v. Pennsylvania Railroad Company et al.

CHANGES IN, WHEN UNJUSTIFIABLE.—Where an existing classification and rate are not shown to operate injuriously to the carriers from a given point or to give undue advantage to shippers, a change is not justifiable that materially injures an important industry and a class of shippers at that point who have there built up the industry in reliance upon a continuation of the previous classification and rate first established and long maintained by the carriers themselves, without complaint from any quarter. (*Ib.*)

VALUE OF.—Classification of freight for transportation purposes is in terms recognized by the act to regulate commerce, and is therefore lawful. It is also a valuable convenience both to shippers and carriers.

Thurber et al. v. New York Central and Hudson River Railroad Company et al.

Leggett v. Same.

Greene v. Same.

CAR-LOAD AND LESS THAN CAR-LOAD QUANTITIES.—A classification of freight designating different classes for car-load quantities, and for less than car-load quantities for transportation at a lower rate in car loads than in less than car loads is not in contravention of the act to regulate commerce. The circumstances and conditions of the transportation in respect to the work done by the carrier and the revenue earned are dissimilar and may justify a reasonable difference in rate. The public interests are subserved by car-load classifications of property that, on account of the volume transported to reach markets or supply the demands of trade throughout the country, legitimately or usually moves in such quantities. (*Ib.*)

CAR-LOAD AND LESS THAN CAR-LOAD QUANTITIES.—Continued.

Under the Official Classification, the articles known in trade as grocery articles are so classified as to discriminate unjustly in rates between car loads and less than car loads upon many articles, and a revision of the classification and rates to correct unjust differences and give these respective modes of shipping more relatively reasonable rates is necessary, and is so ordered. (*Ib.*)

RULES OF THE COMMISSION.—

McMillan & Co. v. The Western Classification Committee.

SURGICAL CHAIRS.—Where questions of classification and rates are involved as to one particular article of freight, it is often necessary to examine and consider the classification and rates upon other articles in which the same calculations in respect of value, bulk, and expense of handling, and of carriage, would to a considerable extent enter; and for the purposes of such comparison it is not indispensably necessary that the articles should be competitive with each other, though if they are competitive then this feature must more strongly bring to view the fact of discrimination in rates, if there be such.

Harvard Company v. Pennsylvania Company *et al*

The valuable service performed to the transportation interests of the country by rate and classification committees. Rules recognized by the Commission in making of classifications and rates. (*Ib.*)

CLASSIFICATION COMMITTEE.—Complaints brought against a classification committee, whose powers are merely recommendatory, held insufficient.

McMillan & Co. v. Western Classification Company.

CONSIDERATIONS AFFECTING.—Where questions of classification and rates are involved as to one particular article of freight, it is often necessary to examine and consider the classification and rates upon other articles in which the same calculations in respect of value, bulk, and expense of handling, and of carriage, would to a considerable extent enter; and for the purposes of such comparison it is not indispensably necessary the articles should be competitive with each other; though if they are competitive, then this feature must more strongly bring to view the fact of discrimination in rates, if there be such.

The Harvard Company v. The Pennsylvania Company *et al*.

The valuable service performed to the transportation interests of the country by rate and classification committees. Rules recognized by the Commission in making classifications and rates. (*Ib.*)

MANUFACTURER'S DESCRIPTION GOVERNS AS TO VALUE.—Upon complaint by a manufacturer of soap, advertised and sold as toilet soap, charging unjust discrimination by classifying his product in the second class with other toilet soaps and not in the fourth class with laundry soaps, as he claims it should be classed, for the reason that his toilet soap is not substantially superior to soap put on the market by certain other manufacturers as laundry soap, which, under that description, is transported at a lower rate. *Held*, That the manufacturer's description of his product for commercial purposes as an article of superior grade and value warrants its classification accordingly, and carriers are not required to classify and transport it as a laundry soap.

The Andrews Soap Company v. The Pittsburgh, Cincinnati and St. Louis Railway Company *et al*.

WHEAT AND WHEAT FLOUR.—On complaint of a differential of 5 cents per hundred pounds on wheat lower than the rate charged on wheat flour from Missouri and Kansas points to points in Texas it was. *Held*, Reserving

WHEAT AND WHEAT FLOUR.—Continued.

any questions that may arise in case a uniform classification shall be established, at present an exception to a general rule of classification or rate making may be justified by adequate considerations, in view of dissimilar conditions in different portions of the country, and when a rigid application of a general rule will be injurious to important public interests an exception is only reasonable.

Kauffman Milling Company *v.* Missouri Pacific Railway Company *et al.*

MARKET VALUE; SHIPPERS' REPRESENTATIONS TO THE PUBLIC; MANUFACTURERS' DESCRIPTION.—In arranging the classification of articles of commerce, their market value and the shippers' representations to the public as to their character may properly be taken into account in ascertaining the analogy they bear to other articles, and determining the class to which they justly belong. This is especially applicable to articles in which there is no free competition among producers and shippers. And carriers are not required to estimate the intrinsic value of freight as distinguished from its commercial value for purposes of classification and rates.

Warner *v.* New York Central and Hudson River Railroad Company *et al.*

A manufacturer's description of an article to induce its purchase by the public also describes it for transportation, and carriers may accept his description for purposes of classification and rates. Carriers are not required to analyze freight to ascertain whether it is in fact inferior to the description or public representations under which it is sold, in order to give it a lower rate corresponding to its actual value.

Andrew Soap Company *v.* Pittsburgh, Cincinnati and St. Louis Railway Company *et al.*

VOLUME OF THE TRAFFIC.—The volume of traffic supplied by an article for transportation is also an element that may be considered in its classification, as a basis for rates that are reasonable both for carriers and shippers.

Warner *v.* New York Central and Hudson River Railroad Company *et al.*

PATENT MEDICINES.—In view of the much higher market value of patent medicines and the smaller volume of traffic they supply, a higher classification than for ale, beer, and mineral water, in which there is much greater competition among shippers, is not unreasonable. (*Id.*)

FOOD PRODUCTS.—

In re Alleged Excessive Freight Rates and Charges on Food Products.

Kauffman Milling Company *v.* Missouri Pacific Railway Company *et al.*

SOAP.—Prior to May, 1889, complainant's common soap was charged at fifth-class rates, net weight, but since these defendants have charged fifth-class rates at gross weight. *Held*, that this difference operated to make the rate unreasonable.

Proctor & Gamble *v.* Cincinnati, Hamilton and Dayton Railroad Company *et al.*

SOAP.—Continued.

Where two kinds of soap are made use of for the same purposes, and are advertised and held out to the world as suited for like purposes, and are substantially equal in value, they should both for purposes of transportation and rating be placed in the same classification.

Beaver & Company *v.* Pittsburgh, Cincinnati and St. Louis Railway Company *et al.*

PETROLEUM AND ITS PRODUCTS.—The classification of petroleum oil and its products in car loads adopted and generally applied by carriers is the same, and the rates upon oil and its products should correspond with their classification and be alike.

Rice, Robinson & Witherop *v.* Western New York and Pennsylvania Railroad Company.

SALTED HIDES AND PELTS. (*Ib.*)

RECOGNIZED BY ACT.—Freight classification is deemed by the railroads convenient and essential to any practical system of rate making, and is so recognized, though not enjoined, by the act to regulate commerce.

Coxe Brothers & Co. *v.* Lehigh Valley Railroad Company.

WHEN USED AS A DEVICE TO VIOLATE THE LAW, COMMISSION WILL REVISE AND CORRECT. (*Ib.*)

COAL.

See Long and Short Haul Clause; Preference and Advantage; Reasonable Rates; Relative Rates; Unjust Discrimination; Practice.

Haddock *v.* Delaware, Lackawanna and Western Railroad Company.

Coxe Brothers & Company *v.* Lehigh Valley Railroad Company.

COAL COMPANY.

CAPITAL STOCK OWNED BY RAILROAD COMPANY.—

Coxe Brothers & Company *v.* Lehigh Valley Railroad Company.
See Unjust Discrimination.

COMBINATION RATES.

THROUGH RATE TO COMPETITIVE POINT ADDED TO LOCAL RATE BACK TO DESTINATION.—

Lehmann, Higginson & Company *v.* Southern Pacific Company.
Hamilton & Brown *v.* Chattanooga, Rome and Columbus Railroad Company *et al.*

James & Mayer Buggy Company *v.* Cincinnati, New Orleans and Texas Pacific Railroad Company *et al.*

COMMERCE.

DESTINED TO AN ADJACENT FOREIGN COUNTRY.—Under the provisions of the act the Grand Trunk Railway Company of Canada is required to print, post, and file its schedule of rates and charges for the transportation of property from points in the United States to points in Canada, and can not lawfully charge, demand, or receive from any person or persons a less compensation therefor, or for any services in connection therewith, than is specified in such published schedule as may at the time be in force.

In re Acts and Doings of the Grand Trunk Railway Company of Canada.

FOREIGN REGULATION OF.—English legislation and the procedure thereunder in respect to applications by carriers to be admitted to through routes and to participate in through rates stated.

Little Rock and Memphis Railroad Company *v.* East Tennessee Virginia and Georgia Railway Company *et al.*

STATE AND FEDERAL REGULATION OF.—

Leonard *v.* Chicago and Alton Railroad Company.

Chappel *v.* Chicago and Alton Railroad Company.

RAILROAD REGULATION IN THE STATES.—

Report of Interstate Commerce Commission.

RAILROAD REGULATION IN FOREIGN COUNTRIES.—

Report of Interstate Commerce Commission.

See Interstate Commerce.

COMMERCIAL CONSIDERATIONS.

Warner *v.* New York Central and Hudson River Railroad Company *et al.*

Andrews Soap Company *v.* Pittsburg, Cincinnati and St. Louis Railway Company *et al.*

In re Alleged Excessive Freight Rates and Charges on Food Products.

Rice, Robinson & Witherop *v.* Western New York and Pennsylvania Railroad Company.

Board of Trade of the City of Chicago *v.* Chicago and Alton Railroad Company *et al.*

Poughkeepsie Iron Company *v.* New York Central and Hudson River Railroad Company *et al.*

Delaware State Grange, etc., *v.* New York, Philadelphia and Norfolk Railroad Company *et al.*

Squire & Co. *v.* Michigan Central Railroad Company *et al.*

COMMISSIONS ON SALE OF TICKETS.

REGULATION AGAINST PAYING.—The defendants adopted a regulation that they would not sell tickets for and over the line of a connecting road unless such connecting road would abstain from paying commissions to their agents on the sales made, and would make promise to that effect. Such a regulation is reasonable, and therefore legal.

Chicago and Alton Railroad Company *v.* Pennsylvania Railroad Company.

Chicago, Rock Island and Pacific Railroad Company *v.* New York Central and Hudson River Railroad Company.

A railroad company has a right to insist that its agents shall be its employés exclusively, and it is not obliged to permit any other company to make them its employés also. (*Ib.*)

The requirement in the act to regulate commerce that common carriers shall "afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding, and delivering passengers and property to and from their several lines, and those connecting therewith," will not require a railroad company to sell through tickets over the line of a road whose managers persist in offering commissions to the agents who sell such tickets. The practice of paying commissions to the agents of other roads on tickets sold over the road of the company paying the same, condemned as demoralizing and as an improper drain on corporate resources. (*Ib.*)

REGULATION AGAINST PAYING.—Continued.

If a passage ticket over several roads is a reasonable facility of travel, the privilege of paying a commission to the agent who sells it, and who would be required by duty to his employer to sell it when called for, without any commission therefor, can not be regarded as an incident to the facility, and therefore can not be insisted on. (*Ib.*)

Second Annual Report Interstate Commerce Commission.

In re Passenger Tariffs and Rate Wars.

Third Annual Report of Interstate Commerce Commission.

PROHIBITION OF, RECOMMENDED.—(*Ib.*)

PAYMENT OF,

Report of Interstate Commerce Commission.

COMMODITY RATES.

DESCRIBED AND DISCUSSED.—

New York Board of Trade and Transportation *et al.* v. Pennsylvania Railroad Company *et al.*

POWER OF CARRIER TO MAKE.—(*Ib.*)

COMMON CONTROL, MANAGEMENT OR ARRANGEMENT.

DEFINED.—The words “common control, management or arrangement,” as found in the first section of the act to regulate commerce, defined and applied to the special facts of the case.

Boston Fruit and Produce Exchange v. New York and New England Railroad Company *et al.*

COMMUTATION TICKETS.

Pittsburg, Cincinnati and St. Louis Railway Company v. Baltimore and Ohio Railroad Company.

Sidman v. Richmond and Danville Railroad Company.

See Tickets.

COMPETITION.

MAY MAKE OUT DISSIMILAR CIRCUMSTANCES AND CONDITIONS IN RAILWAY TRAFFIC.—

In re Louisville and Nashville Railroad Company.

WHEN NOT SUFFICIENT TO CONSTITUTE EXCEPTION.—

Vermont State Grange v. Boston and Lowell Railroad Company *et al.*

Harwell v. Columbus and Western Railway Company.

WHEN NOT AN EXCUSE FOR UNJUST RELATIVE RATES.—

Raymond v. Chicago, Milwaukee and St. Paul Railway Company.
Boards of Trades Union, etc., v. Chicago, Milwaukee and St. Paul Railway Company.

EFFECT OF EXCESSIVE.—

First Annual Report of Interstate Commerce Commission.

EFFECT OF ACT UPON.—

First Annual Report of Interstate Commerce Commission.

BETWEEN LOCALITIES.—

Second Annual Report of Interstate Commerce Commission.

WHEN DISSIMILAR CIRCUMSTANCES AND CONDITIONS MAY BE MADE OUT BY RAILROAD COMPETITION.—

Business Men's Association of the State of Minnesota *v.* Chicago, St. Paul, Minneapolis and Omaha Railway Company.

Business Men's Association of the State of Minnesota *v.* Chicago and Northwestern Railway Company.

WHEN DISSIMILAR CIRCUMSTANCES AND CONDITIONS ARE NOT MADE OUT BY RAILROAD COMPETITION.—

Martin *v.* Southern Pacific Company *et al.*

Second Annual Report of Interstate Commerce Commission.

Business Men's Association of the State of Minnesota *v.* Chicago St. Paul, Minneapolis and Omaha Railway Company.

In re Chicago, St. Paul and Kansas City Railway Company.

EQUAL MILEAGE RATES OFTEN PREVENT.—

New Orleans Cotton Exchange *v.* Cincinnati, New Orleans and Texas Pacific Railway Company *et al.*

WHEN NOT AN EXCUSE FOR UNJUST RELATIVE RATES.—

Logan *et al.* *v.* Chicago and Northwestern Railway Company.

COMBINED RAIL AND WATER.—

James & Abbott *v.* East Tennessee, Virginia and Georgia Railway Company.

BY CANADIAN CARRIERS.—Physical conditions stated; regulations under which it is carried on described.

Third Annual Report of Interstate Commerce Commission.

WATER.—Demoralizing influences of, on rail rates described. *Ib.*

Bates *v.* Pennsylvania Railroad Company *et al.*

Rice *v.* The Atchison Topeka and Santa Fé Railroad Company *et al.*

San Bernardino Board of Trade *v.* Atchison, Topeka and Santa Fé Railroad Company *et al.*

King & Co. *v.* New York, New Haven and Hartford Railroad Company *et al.*

Lehmann, Higginson & Co. *v.* Southern Pacific Company *et al.*

Poughkeepsie Iron Company *v.* New York Central and Hudson River Railroad Company *et al.*

Delaware State Grange, etc., *v.* New York, Philadelphia and Norfolk Railroad Company *et al.*

James & Mayer Buggy Company *v.* Cincinnati, New Orleans and Texas Pacific Railway Company *et al.*

WHAT IS LEGITIMATE.—The transportation of traffic under circumstances and conditions that force a low rate for its carriage or an abandonment of the business, but which affords some revenue above the cost of its movement and works no material injustice to other patrons of a carrier, is to be deemed legitimate competition. When, however, its carriage is at a loss and imposes a burden on like traffic at other points and on other traffic, it is to be deemed destructive and illegitimate competition.

Lehmann, Higginson & Co. *v.* The Southern Pacific Company *et al.*

See Long and Short Haul Clause; Unjust Discrimination.

WHAT IS NOT LEGITIMATE.—*Ib.*

BETWEEN PRODUCERS, LOCALITIES, OR COMMODITIES.—

Warner *v.* New York Central and Hudson River Railroad Company *et al.*

BETWEEN PRODUCERS, LOCALITIES, OR COMMODITIES.—Continued.

- Andrews Soap Company *v.* Pittsburg, Cincinnati and St. Louis Railway Company *et al.*
In re Alleged Excessive Freight Rates and Charges on Food Products.
Manufacturers' and Jobbers' Union of Mankato *v.* Minneapolis and St. Louis Railway Company *et al.*
Rice, Robinson & Witherop *v.* Western New York and Pennsylvania Railroad Company.
Board of Trade of the City of Chicago *v.* Chicago and Alton Railroad Company *et al.*
Poughkeepsie Iron Company *v.* New York Central and Hudson River Railroad Company *et al.*
Kauffman Milling Company *v.* Missouri Pacific Railway Company *et al.*
Coxe Brothers & Company *v.* Lehigh Valley Railroad Company.
Squire & Co. *v.* Michigan Central Railroad Company *et al.*
Hamilton & Brown *v.* Chattanooga, Rome and Columbus Railroad Company *et al.*
Beaver & Company *v.* Pittsburg, Cincinnati and St. Louis Railway Company *et al.*

PUBLIC NOT TO BE DEPRIVED OF BENEFITS OF FAIR COMPETITION BY CONSOLIDATION.—

- Rice, Robinson & Witherop *v.* Western New York and Pennsylvania Railroad Company.

RAILROAD.—

- Squire & Co. *v.* Michigan Central Railroad Company *et al.*

COMPETITIVE POINTS.

- Lehmann, Higginson & Company *v.* Southern Pacific Company *et al.*
Manufacturers' and Jobbers' Union of Mankato *v.* Minneapolis and St. Louis Railway Company *et al.*
Board of Trade of the City of Chicago *v.* Chicago and Alton Railroad Company *et al.*
Poughkeepsie Iron Company *v.* New York Central and Hudson River Railroad Company *et al.*
Rice, Robinson & Witherop *v.* Western New York and Pennsylvania Railroad Company.
Kauffman Milling Company *v.* Missouri Pacific Railway Company *et al.*
Squire & Company *v.* Michigan Central Railroad Company *et al.*
Hamilton & Brown *v.* Chattanooga, Rome and Columbus Railroad Company *et al.*
James & Mayer Buggy Company *v.* Cincinnati, New Orleans and Texas Pacific Railway Company *et al.*

COMPLAINT.

MUST BE SUPPORTED BY PROOF.—

- Holbrook *v.* St. Paul, Minneapolis and Manitoba Railroad Company.
Fulton *v.* Chicago, St. Paul, Minneapolis and Omaha Railroad Company.
Harding *v.* Same company.

FORM OF.—

See Petition; Parties; Amendment; Rules of Practice.

INVESTIGATION WHEN NO PERSONAL GRIEVANCE PROVED.

Smith v. Northern Pacific Railroad Company.

WHEN NOT ADJUDICATED.—When after trial, but before decision, the defendant concedes the relief sought and reduces its tariff to the rates claimed by the petitioner, no order is required to be made by the Commission.

Manufacturers' and Jobbers' Union of Mankato v. Minneapolis and St. Louis Railroad Company et al.

WHEN NOT ENTERTAINED BY COMMISSION.—No reasonable ground appearing.

La Crosse Manufacturer's and Jobbers' Union v. Chicago, Milwaukee, and St. Paul Railway Company.

Ottinger v. Southern Pacific Company.

AMENDMENTS OF.—The Commission is liberal in allowing an amendment to complaints, but will not allow one that would be in effect making a new case.

Delaware State Grange, etc. v. New York, Philadelphia, and Norfolk Railroad Company et al.

Amendment is not necessary to bring in matters that would have been the subject of proof under the complaint as originally filed. (*Ib.*)

WHEN NOT FAVORED.—A complaint made for the purpose of retaliation for a fancied wrong, as to get even with a carrier for revocation of complainant's pass, does not commend itself to the Commission.

Slater v. Northern Pacific Railroad Company.

INFORMAL.—

Second Annual Report of Interstate Commerce Commission.

Practice of Commission in regard to stated.

McMillan & Co. v. Western Classification Committee.

PARTIES.—Where a complaint is made against the reasonableness of through rates agreed upon by several connecting lines, it is necessary to make all of such connecting lines parties defendant.

Michigan Congress Water Company v. Chicago and Grand Trunk Railway Company.

WHEN INSUFFICIENT.—When a complaint charged that the respondent railroad companies, which were common carriers, subject to the act to regulate commerce, were accustomed to make deductions of from 5 to 10 pounds of wheat per load from the true weight when delivered by the farmer to the buyer at the elevators of the respondents, and gave receipt to the farmer for the amount as thus diminished, upon which the latter was paid by the buyer, thereby suffering a loss to the extent of such reduction, but failed to charge that the wheat was delivered for interstate transportation, or, indeed, for transportation anywhere, it was *held* that the complaint was insufficient in substance to show violation of the act to regulate commerce, and that the respondents were entitled to have it dismissed on their motions to that effect, but that the dismissal should be without prejudice.

White v. The Michigan Central Railroad Company and the Lake Shore and Michigan Southern Railway Company.

WHEN SUFFICIENT.—Where complaint alleges that a greater charge, in the aggregate, for the transportation of a like kind of property, is made for a shorter than for a longer distance, over the same line in the same direction, the shorter being included in the longer, and that an unlawful preference is thereby given one locality over another, *Held*, Complaint is

WHEN SUFFICIENT.—Continued.

sufficient to put the carriers on proof that the services were rendered under such dissimilar circumstances as to justify the greater charge.

The San Bernardino Board of Trade *v.* The Atchison, Topeka and Santa Fé Railroad Company *et al.*

WHEN SUFFICIENT UNDER FOURTH SECTION.—

San Bernardino Board of Trade *v.* Atchinson, Topeka, and Santa Fé Railroad Company *et al.*

King & Company *v.* New York, New Haven and Hartford Railroad Company *et al.*

DUTY OF COMMISSION TO INVESTIGATE—

In re Alleged Excessive Freight Rates and Charges on Food Products.

AMENDMENT, AFTER FILING OF DEMURRER.—

Capehart *et al.* *v.* Louisville and Nashville Railroad Company *et al.*

FORMAL. (*Ib.*)

JURISDICTION.—Motion to dismiss *in toto* for want of jurisdiction on the ground that jurisdiction was precluded by contracts entered into prior to the act denied, good ground of complaint being set forth in respect to northern and western shipments of coal from complainant's mines.

Haddock *v.* Delaware, Lackawanna and Western Railroad Company.

DISMISSAL AFTER CONCESSION OF RELIEF.—

New York Board of Trade and Transportation *et al.* *v.* Pennsylvania Railroad Company *et al.*

See Interstate Commerce Commission; Parties: Practice;

COMPLAINANT.

NEED NOT BE DIRECTLY DAMAGED.—

In re Acts and Doings of Grand Trunk Railway Company of Canada.

WHEN PRECLUDED BY CONTRACT.—

Haddock *v.* Delaware, Lackawanna and Western Railroad Company.

MERCANTILE SOCIETY; SPECIAL DAMAGE NEED NOT BE SHOWN.—The Boston Fruit and Produce Exchange is a mercantile society, such as is described in the thirteenth section of the act, and as such has the right to maintain a proceeding like the present, without showing special damage to itself.

Boston Fruit and Produce Exchange *v.* New York and New England Railroad Company *et al.*

STATE RAILROAD COMMISSIONS AS.—

Railroad Commission of Florida *v.* Savannah, Florida and Western Railway Company *et al.*

See Practice.

CONCESSION OF RELIEF.

TERMINATES THE CONTROVERSY.—

Manufacturers' and Jobbers' Union of Mankato *v.* Minneapolis and St. Louis Railroad Company *et al.*

Second Annual Report of Interstate Commerce Commission.

TERMINATES THE CONTROVERSY.—Continued.

Bishop *v.* Duval, receiver, etc.Harris *v.* Duval, receiver, etc., *et al.*Lincoln Board of Trade *v.* Union Pacific Railway Company.Chicago, St. Louis and Pittsburg Railroad Company *v.* Cleveland, Cincinnati, Chicago and St. Louis Railway Company.American Wire Nail Company *v.* Cincinnati, New Orleans and Texas Pacific Railway Company *et al.*Rawson *v.* Newport News and Mississippi Valley Company.New York Board of Trade and Transportation *et al. v.* Pennsylvania Railroad Company *et al.*

PARTIAL.—

Bates *v.* Pennsylvania Railroad Company *et al.*

WHEN REPARATION IS MADE NO ORDER WILL BE ISSUED.—

New Orleans Cotton Exchange *v.* Louisville, New Orleans and Texas Railway Company.

CONDITIONS.

See Circumstances and Conditions.

CONGRESS.

POWER TO REGULATE INTERSTATE COMMERCE ABSOLUTE.—

Kauffman Milling Company *v.* Missouri Pacific Railway Company *et al.*

CONNECTING LINES.

WATER AND RAIL.—

Capehart *et al. v.* Louisville and Nashville Railroad Company *et al.*New York and Northern Railway Company *v.* New York and New England Railroad Company *et al.*

TRANSPORTATION OF INTERSTATE TRAFFIC BY INITIAL CARRIER BETWEEN POINTS IN THE SAME STATE.—

Boston Fruit and Produce Exchange *v.* New York and New England Railroad Company *et al.*

TRANSPORTATION OF INTERSTATE TRAFFIC BY TERMINAL CARRIER BETWEEN POINTS IN THE SAME STATE.—

James and Mayer Buggy Company *v.* Cincinnati, New Orleans and Texas Pacific Railway Company *et al.*

ONE LINE WHOLLY WITHIN A STATE.—

New York and Northern Railway Company *v.* New York and New England Railroad Company *et al.*

THROUGH CARRIAGE OVER.—

King & Co. *v.* New York, New Haven and Hartford Railroad Company *et al.*Coxe Brothers & Co. *v.* Lehigh Valley Railroad Company *et al.*Boston Fruit and Produce Exchange *v.* New York and New England Railroad Company *et al.**See* Long and Short Haul Clause; Through Routes and Through Rates; Common Control, Management or Arrangement.

CONSOLIDATION OF ROADS.

COMPETING LINES.—

Rice, Robinson & Witherop *v.* Western New York and Pennsylvania Railroad Company.

SUBJECT DISCUSSED.—

Report of Interstate Commerce Commission.

CONTINUOUS CARRIAGE OF FREIGHTS.

Chicago, Rock Island and Pacific Railway Company *v.* Chicago and Alton Railroad Company.

Mattingly *v.* Pennsylvania Company.

INTERRUPTIONS.—Continuous carriage of freights can not be prevented from being treated as one continuous carriage from the place of shipment to the place of destination by any means or devices intended to evade any of the provisions of the act.

In re Acts and Doings of Grand Trunk Railway Company of Canada.

CAN NOT BE AVOIDED BY EVASION OF THE LAW.—The carriage of freights can not be prevented from being treated as one continuous carriage from the place of shipment to the place of destination by any means or devices intended to evade any of the provisions of the act.

In re Acts and Doings of Grand Trunk Railway Company of Canada.

Boston Fruit and Produce Exchange *v.* New York and New England Railroad Company *et al.*

See Seventh Section.

CONTRACTS.

TRACKAGE RIGHTS.—In the absence of statutory provision the rights of a railroad company under a lawful agreement for a specified use of the tracks of another railroad company are measured in respect to the track use by the terms of the contract, and the provisions of the act to regulate commerce applied to the situation created by the contract and had no authority for a different use of the tracks.

Alford *v.* Chicago, Rock Island and Pacific Railway Company.

CARS.—A railroad company may acquire cars by construction, by purchase, or by contract for their use, and no one has the power to compel a railroad company to select among these several modes or to contract with all comers.

Worcester Excursion Car Company *v.* Pennsylvania Railroad Company.

See Agreements; Facilities of Traffic; Preference and Advantage; Through Routes and Through Rates; Unjust Discrimination.

COMPULSORY PRODUCTION OF.—

In re Alleged Excessive Freight Rates and Charges on Food Products.

Haddock *v.* Delaware, Lackawanna and Western Railroad Company *et al.*

ENTERED INTO PRIOR TO THE ACT.—No claim is made that the validity of the contract has been impaired or affected by the passage of the Act to Regulate Commerce, although the Commission distinctly propounded the inquiry whether such claim was made. And the Commission carefully

ENTERED INTO PRIOR TO THE ACT.—Continued.

abstains from expressing any opinion as to the effect of the Act to Regulate Commerce in impairing the validity of the contracts referred to.

Haddock *v.* Delaware, Lackawanna and Western Railroad Company.

FOR USE OF IMPROVED STOCK CARS OWNED BY SHIPPERS.—

Shamberg *v.* Delaware, Lackawanna and Western Railroad Company *et al.*

CONSIDERATION OF AS EVIDENCE AFTER FILING.—

Boston Fruit and Produce Exchange *v.* New York and New England Railroad Company *et al.*

FOR THROUGH LINES.—

New York and Northern Railway Company *v.* New York and New England Railroad Company *et al.*

See Evidence; Practice; Through Routes and Through Lines.

CORN AND CORN PRODUCTS.

Bates *v.* Pennsylvania Railroad Company *et al.*

COST OF CARRIAGE.

IS AN IMPORTANT FACT IN TRANSPORTATION CHARGES.—

In re Louisville and Nashville Railroad Company.

Boston Chamber of Commerce *v.* Lake Shore and Michigan Southern Railway Company.

Evans *v.* Oregon Railway and Navigation Company.

McMorran *et al. v.* Grand Trunk Railway Company of Canada *et al.*

Thurber *et al. v.* New York Central and Hudson River Railroad Company *et al.*

Leggett *v.* Same.

Greene *v.* Same.

Lehmann, Higginson & Co. *v.* Southern Pacific Company *et al.*

In re Alleged Excessive Freight Rates and Charges on Food Products.

Manufacturers' and Jobbers' Union of Mankato *v.* Minneapolis and St. Louis Railway Company *et al.*

Board of Trade of the City of Chicago *v.* Chicago and Alton Railroad Company *et al.*

Bates *v.* Pennsylvania Railroad Company *et al.*

New York Board of Trade and Transportation *et al. v.* Pennsylvania Railroad Company *et al.*

W. S. King & Co. *v.* The New York, New Haven and Hartford Railroad Company *et al.*

OF LONG-HAUL TRAFFIC NOT TO BE IMPOSED ON LOCAL TRAFFIC. (*lb.*)DIFFICULTY OF DETERMINING. (*lb.*)

ELEMENTS ENTERING INTO.—

First Annual Report of Interstate Commerce Commission.

DIFFERENCE BETWEEN, ON THROUGH AND LOCAL TRAFFIC.—

Business Men's Association of the State of Minnesota *v.* Chicago and North-Western Railway Company.

MILK TRANSPORTATION.—The elements of extra expense are substantially the same upon milk transported from every part of the line of road over which the special milk trains run.

Howell *et al. v.* New York, Lake Erie and Western Railroad Company *et al.*

EXCEPTIONAL CIRCUMSTANCES AND CONDITIONS CAUSED BY.—

Rice, Robinson & Witherop *v.* Western New York and Pennsylvania Railroad Company.

LOCAL AND THROUGH TRAFFIC.—Through rates should not be made so low as to burden other business with a part of the cost of the business upon which it is imposed.

Lippman & Co. *v.* Illinois Central Railroad Company.

CONSIDERATION OF, IN DETERMINING REASONABLE RATES.—In fixing reasonable rates the requirements of operating expenses, bonded debt, fixed charges, and dividend on capital stock from the total traffic are all to be considered, but the claim that any particular rate is to be measured by these as a fixed standard, below which the rate may not lawfully be reduced, is one rightly subject to some qualifications, one of which is the obligations must be actual and in good faith. (*Ib.*)

CORN AND CORN PRODUCTS.—Upon a rehearing of this case, the additional evidence warrants a finding contrary to what appeared and was found in the original hearing, that the costs to the defendants of transporting the direct products of corn, including terminal expenses, properly chargeable as freight charges, between Indianapolis and seaboard points, is greater on the product than on raw corn.

Bates *v.* Pennsylvania Railroad Company *et al.*

BASIS FOR ADJUSTMENT OF RELATIVE RATES.—The proper relation of rates for transportation of strictly competitive articles over the same line should be determined by reference to respective costs of service ascertained with reasonable accuracy.

Squire & Co. *v.* Michigan Central Railroad Company *et al.*

COST OF PRODUCTION.

In re Alleged Excessive Freight Rates and Charges on Food Products.

Poughkeepsie Iron Company *v.* New York Central and Hudson River Railroad Company *et al.*

Coxe Brothers & Co. *v.* Lehigh Valley Railroad Company *et al.*

Delaware State Grange, etc., *v.* New York, Philadelphia and Norfolk Railroad Company *et al.*

Squire & Co. *v.* Michigan Central Railroad Company *et al.*

Boston Fruit and Produce Exchange *v.* New York and New England Railroad Company *et al.*

COST OF SERVICE.

See Cost of Carriage.

COTTON.

New Orleans Cotton Exchange *v.* Louisville, New Orleans and Texas Railway Company.

DAMAGE.

See Complaint.

DECISION.

APPLICATION LIMITED TO PRESENT SITUATION.—The decision in this case applies only to the present situation in the territory in question, and is

APPLICATION LIMITED TO PRESENT SITUATION.—Continued.

not intended to lay down a permanent rule for the future nor to apply elsewhere.

Kauffman Milling Company *v.* Missouri Pacific Railway Company *et al.*

CHANGED AFTER REHEARING.—

Bates *v.* Pennsylvania Company *et al.*

COMMODITY RATES. (*Ib.*)SPECIAL CLASS RATES. (*Ib.*)

COMMON CONTROL, MANAGEMENT OR ARRANGEMENT.—

Boston Fruit and Produce Exchange *v.* New York and New England Railroad Company *et al.*

DISCRIMINATION AS USED IN THIRD SECTION.—

New York and Northern Railroad Company *v.* New York and New England Railroad Company *et al.*

DEPOSITIONS.

HOW TAKEN AND FILED.—

See Appendix H.

DEVICE.

Rice, Robinson & Witherop *v.* Western New York and Pennsylvania Railroad Company.

Coxe Brothers & Co. *v.* Lehigh Valley Railroad Company.

Shamberg *v.* Delaware, Lackawanna and Western Railroad Company *et al.*

See UNJUST DISCRIMINATION; PREFERENCE OR ADVANTAGE.

DISCRETION.

Lehmann, Higginson & Co. *v.* Southern Pacific Company.

Delaware State Grange, etc., *v.* New York, Philadelphia and Norfolk Railroad Company *et al.*

Squire & Co. *v.* Michigan Central Railroad Company *et al.*

DISCRIMINATION.

BETWEEN CONNECTING LINES.—

Capehart *v.* Louisville and Nashville Railroad Company *et al.*

New York and Northern Railway Company *v.* New York and

New England Railroad Company *et al.*

See Through Routes and Through Rates; Unjust Discrimination.

DISTANCE.

LONGER AND SHORTER.—

See Long and Short Haul Clause; Through and Local Rates; Reasonable Rates; Mileage Rates; Preference or Advantage.

DIVIDENDS.

In re Alleged Excessive Freight Rates and Charges on Food Products.

See Reasonable Rates.

DIVISIONS OF THROUGH RATES.

See Through and Local Rates; Mileage Rates; Reasonable Rates.

DOCUMENTARY EVIDENCE.

See Practice; Evidence; Interstate Commerce Commission.

DOMESTIC MERCHANDISE.

New York Board of Trade and Transportation *et al. v. Pennsylvania Railroad Company et al.*

EQUIPMENT.

Rice, Robinson & Witherop *v. Western New York and Pennsylvania Railroad Company.*

Delaware State Grange, etc., *v. New York, Philadelphia and Norfolk Railroad Company et al.*

Shamberg *v. Delaware, Lackawanna and Western Railroad Company et al.*

Boston Fruit and Produce Exchange *v. New York and New England Railroad Company et al.*

See Cars.

ESTOPPEL.

CONTRACTS BETWEEN THE PARTIES.—

Haddock *v. Delaware, Lackawanna and Western Railroad Company.*

EVIDENCE.

PROOF REQUIRED.—When no evidence whatever is presented to sustain the allegations of a complaint which are denied by the answer, the case must be dismissed without prejudice.

Leonard *v. Union Pacific Railway Company.*

TO REBUT INTERFERENCE OF UNJUST DISCRIMINATION.—Course of dealing between parties may be shown, and circumstances showing good faith and absence of unfriendly spirit.

Riddle, Dean & Co. *v. Baltimore and Ohio Railroad Company.*

PRESUMPTION.—If a railroad company avows a purpose to comply with the law, it must be assumed that it will do so and is doing so, until there is evidence that the purpose is not lived up to.

Holbrook *v. St. Paul, Minneapolis and Manitoba Railroad Company.*

CONSTRUCTION OF CLASSIFICATION.—Railway officials who have made a classification can not testify to their understanding of its construction.

Hurlburt *v. Lake Shore and Michigan Southern Railway Company.*

Hurlburt *v. Pennsylvania Railroad Company.*

It is competent to prove by the testimony of witnesses in what sense terms of art or terms peculiar to any occupation or business are used by those engaged in such occupation or business. But when such terms are made use of in a classification sheet to designate the product of a particular employment, they are supposed to be used as understood in that employment, and it is not competent for railroad experts, when the meaning of the classification is in question, to testify in what sense they are understood in transportation circles. (*Ib.*)

PREFERENCE AND ADVANTAGE.—Without some proof of damage resulting to complainants, the advantage in rates as related to distance is not necessarily undue or unreasonable, no substantial difference in expense appearing to exist.

Howell *et al.* v. New York, Lake Erie and Western Railroad Company *et al.*

ADDITIONAL.—The Commission is not willing to determine the relative reasonableness of rates at any stations, and in a large extent of territory, upon the mere face of tariffs and without further proof.

Spartanburg Board of Trade v. Richmond and Danville Railroad Company *et al.*

Where it is obvious that there are many parties interested as directly as is the complainant in the question before the Commission, opportunity will be given them to appear at the taking of evidence. (*Ib.*)

A case fully submitted without evidence ordered adjourned to a future day for the purpose of taking evidence on the principle above stated. (*Ib.*)

After decision a petition to open the case for further testimony and rehearing should indicate the nature of the new testimony and its purpose.

In re Rice, Robinson & Witherop v. Western New York and Pennsylvania Railroad Company.

WHAT IS SUFFICIENT.—In proceedings like these it is enough to show the rates actually charged, if there are or have been any such to certain shippers or consignees different from the published tariff rates, or the preferential facilities, if any such, furnished by the defendants to some shippers or consignees and not to others, or the comparative rates on the different commodities named in the complaints, and from and to designated points. Innumerable shipments, with all their minuteness of detail over the various lines that were made for many years before the act to regulate commerce took effect, as well as since that date, and the names of the consignors and consignees at so many different points, through these long periods of time, seem to be immaterial. It appears to be sufficient for all the purposes of these cases to show the rates published, the rates actually charged, and the facilities furnished from and to designated points since the act to regulate commerce went into effect, and for whatever light these may throw upon the question of the reasonableness and justness of the rates, if any, and the fairness of the facilities afforded by way of comparison, what these were for a reasonable time; for example, for a period of twelve months before the act to regulate commerce went into effect.

Rice v. Cincinnati, Washington and Baltimore Railroad Company *et al.*

Rice v. Louisville and Nashville Railroad Company.

IN PENAL AND CRIMINAL PROSECUTIONS—Difficulties in the way of obtaining evidence of violations of the statute discussed.

Report of Interstate Commerce Commission.

The settled principle that protects a man from giving compulsory evidence incriminating himself is a shield under which offenses may frequently hide. The provision in the act that the claim that testimony may tend to incriminate the witness shall not excuse him from testifying, but that his evidence shall not be used against him on the trial of any criminal proceeding does not entirely meet this difficulty. (*Ib.*)

BY DEPOSITION.—Amendment of the act in regard to the attendance of witnesses and the taking of testimony by deposition recommended. (*Ib.*)

BY DEPOSITION.—Continued.

Haddock v. Delaware, Lackawanna and Western Railroad Company.

See Books, Papers, and Documents; Carriers; Practice; Subpoenas *duces tecum*; Proof Burden of Proof; Preferences and Advantage; Depositions.

CASES RETAINED FOR FURTHER SHOWING.—As to the other rail-carrier defendants in this proceeding, which are certain Southern and Southwestern railroads, it appears in a general way that there is water competition at Memphis, Vicksburg, New Orleans, Mobile, and Galveston, but upon this point the evidence is not sufficiently clear to enable the Commission to determine the extent to which this competition at each of these points is actual and whether it involves traffic important in amount; and the Commission therefore retains the case as to these defendants, and will hereafter notify the parties as to the time when and the place where all such further evidence will be heard upon these points that the parties may desire to offer.

Rice v. Atchison, Topeka and Santa Fé Railroad Company *et al.*

The reduced rates are, however, in many cases still considerably above the rates on the same articles from Norfolk, and the showing not being sufficient to enable the Commission to determine satisfactorily how far the lower Norfolk rates were justified by the differences in the conditions and circumstances, that subject is left for future consideration.

Delaware State Grange, etc., v. New York, Philadelphia and Norfolk Railroad Company *et al.*

EFFECT OF CONTRACTS MADE PRIOR TO THE ACT.—Complainant is precluded, by the terms of the contract for shipping coal to Hoboken, from going into evidence to show that the rate on his coal to Hoboken ought to be different from that fixed by the contract; and witnesses and evidence asked for to that end are immaterial.

Haddock v. Delaware, Lackawanna and Western Railroad Company.

The contracts providing that complainant may ship coal to points north and west, on the same terms and rates that respondent for the time being gives other persons, do not preclude complainant from showing that such rates are unjust, oppressive, or unreasonable. Complainant is therefore entitled to a hearing upon that question. (*Ib.*)

ORAL AND DOCUMENTARY.—Subpoena *duces tecum*.

The application for subpoenas *duces tecum* is denied. As applicable to contracts and papers of third persons, not before the Commission, it is denied on the ground of the injustice that might be done such persons; and generally (for the present at least) it is denied on the ground that the material facts can be proven by the testimony of witnesses, without the aid of documentary evidence; although respondent will be expected to produce, for purposes of examination, any books and papers of its own, material to the controversy. (*Ib.*)

PROOF IN SUPPORT OF PETITION FOR REHEARING.—

Proctor & Gamble v. Cincinnati, Hamilton and Dayton Railroad Company *et al.*

CONTRACTS AND TARIFFS FILED WITH COMMISSION.—Contracts and tariffs filed with the Commission under section 6 of the Act may be considered, although not specifically introduced in evidence on the hearing.

Boston Fruit and Produce Exchange v. New York and New England Railroad Company *et al.*

EXCEPTIONAL CONDITIONS.

See Circumstances and Conditions.

EXPORT RATES.

THROUGH.—It is essential that any method for making rates should be practicable, and not afford a cover for discrimination and injustice. The only practicable mode yet devised for making through export rates, as appears by past experience, is to add to the established inland rates from the interior to the seaboard the current ocean rates.

New York Produce Exchange *v.* New York Central and Hudson River Railroad Company *et al.*

Under the amendments of March 2, 1889, to the statute requiring ten days' previous notice of advance and three days' previous notice of reductions in rates, they can not be varied from day to day or oftener to meet fluctuations in ocean rates. (*Ib.*)

Whenever a tariff is established for merchandise billed or intended for export by sea, and ocean rates are not specified, either because of fluctuations or for any other reason, so that only the charge for inland transportation is definitely fixed, the tariff as filed and made public should show the rate charged by the inland carrier or carriers to the point of export, including all terminal charges and expenses, and should also show in what manner the through rate to the ultimate point of destination is to be determined, whether by addition of the ocean rate from time to time prevailing or how otherwise. (*Ib.*)

Third Annual Report of Interstate Commerce Commission.

See Rates; Tariffs; Traffic; Unjust Discrimination.

EXPORT TRAFFIC.

New Orleans Cotton Exchange *v.* Louisville, New Orleans and Texas Railway Company.

EXPRESS COMPANIES.

STATUS OF, UNDER ACT TO REGULATE COMMERCE.—

First Annual Report of Interstate Commerce Commission.

HOW RELATED TO THE ACT.—The mere fact that a common carrier does other business besides the transportation of passengers and property, or performs a further service than that of transportation in respect to the articles carried. *Held*, Not sufficient to exclude the carrier from the operation of the act so far as applicable to its business.

In re Express Companies.

The relation of express companies to interstate commerce considered, together with the extent and measure of their participation therein. The bringing them within the provisions of the act found practicable, and on some accounts desirable. (*Ib.*)

Express business conducted as a branch of the business of a railroad company. *Held*, To be subject to the act. (*Ib.*)

Express business conducted by an independent organization acquiring transportation rights by contract. *Held*, Not to be described in the act with sufficient precision to warrant the Commission in taking jurisdiction thereof. (*Ib.*)

See Second Annual Report of Interstate Commerce Commission.

LIVE STOCK.—Unlawful Device.

Shamberg *v.* Delaware, Lackawanna and Western Railroad Company *et al.*

See Preference or Advantage.

FACILITIES OF TRAFFIC.

EQUALITY IN.—

Chicago and Alton Railroad Company *v.* Pennsylvania Railroad Company.

Heck & Petree *v.* East Tennessee, Virginia and Georgia Railway Company.

The Kentucky and Indiana Bridge Company has the chartered powers of a common carrier and is such *de facto*. It is, therefore, under the act to regulate commerce, entitled to demand of railroad companies, whose lines are intersected by its tracks, the same reasonable, proper, and equal facilities for the interchange of traffic, and for the receiving, forwarding, and delivering of property that may be lawfully demanded by other carriers under that act.

Kentucky and Indiana Bridge Company *v.* Louisville and Nashville Railroad Company.

The Louisville and Nashville Railroad Company united with other companies having lines terminating on the Ohio River at or opposite Louisville in a contract, whereby it was agreed that all their business across the river at that point should be taken over the Louisville bridge. A new bridge being constructed over the river at this point, one of the railroad companies which had contracted to take all its business over the old bridge, transferred the business to the new bridge. The Louisville and Nashville Railroad Company thereupon refused to receive for transportation over its line any freights which had been brought over the new bridge in violation of the contract made with it. *Held*, That this refusal was unlawful. (*Ib.*)

A common carrier by rail to which property is offered for transportation can not in this indirect manner, and by refusal to perform obligations imposed by law upon it, enforce its contracts, but must for that purpose resort to the customary remedies. (*Ib.*)

Nor can a common carrier, as a reason for refusal to afford to another common carrier the customary, reasonable, and equal facilities for the interchange of traffic, assign the fact that such other common carrier supplies no public necessities, the public having been fully accommodated without it. All railroads created by competent public authority must be conclusively presumed to be public conveniences, and other common carriers can not refuse to exchange traffic with them on any suggestion or showing to the contrary. (*Ib.*)

THROUGH ROUTES AND THROUGH RATES.—English legislation and the procedure thereunder in respect to applications by carriers to be admitted to through routes and to participate in through rates stated; and principles there applied explained.

Little Rock and Memphis Railroad Company *v.* East Tennessee, Virginia and Georgia Railway Company *et al.*

The act to regulate commerce was probably intended to effect similar results, but in its present form and in the absence of the necessary machinery it is not adequate to afford the relief prayed in the petition. (*Ib.*)

Recommendations of second annual report for amendment of section 3 renewed. (*Ib.*)

THROUGH ROUTES AND THROUGH RATES.—Continued.

Kentucky and Indiana Bridge Company *v.* Louisville and Nashville Railroad Company (2 I. C. C. Rep., 162), referred to and explained. (*Ib.*)

The national regulations prescribed are not in all respects coextensive with the power of Congress, and do not provide for ordering through routes and through rates. While it is the duty of a State carrier which engages in interstate commerce to forward traffic offered from a connecting line, there is no authority under the present act to compel the carrier to forward the traffic over a route not operated or selected by itself.

Mattingly *v.* Pennsylvania Company.

Through rates and through billing are matters of agreement among carriers engaged in interstate commerce, and, as was decided in the case of The Little Rock and Memphis and Railroad Company *v.* The East Tennessee, Virginia and Georgia Railroad Company (2 Inters. Com. Rep., 454, 3 I. C. C., Rep., 1), the Commission has no power under the statute to compel them against their consent to enter into arrangements for through rates and for through billing.

Capehart & Smith *v.* The Louisville and Nashville Railroad Company *et al.*

An aggregate through rate is itself an entirety, although made up of agreed percentages, proportions, or divisions, as the case may be, of the entire rate among the several carriers; and where the rail carrier makes a through rate from a point on a navigable river with a steamboat line, and refuses to make such through rate with another steamboat, the Commission can not compel the rail carrier to receive freight from or deliver it to the steamboat with which it has refused to make a through rate or to do through billing upon the prepayment of charges for an estimated proportion of the through rate equal in amount to that which the rail carrier receives from the steamboat line with which it has an arrangement for through rates and through billing. (*Ib.*)

The common carriers named and referred to in the last clause of section 3 of the act to regulate commerce are such alone as are subject to the provisions of that statute. (*Ib.*)

INTERCHANGE OF TRAFFIC.—

Third Annual Report of Interstate Commerce Commission.

CONTRACT FOR USE OF TRACKS.—In the absence of statutory provision the rights of a railroad company under a lawful agreement for a specified use of the tracks of another railroad company are measured in respect to the track use by the terms of the contract, and the provisions of the act to regulate commerce apply to the situation created by the contract and add no authority for a different use of the tracks.

Alford *v.* Chicago, Rock Island and Pacific Railway Company.

TO AND FROM LOCAL STATIONS.—The duty of a railroad company operating its own road or a road that it controls to serve the local stations on its line does not apply to a company that has only a running privilege for through trains to reach points on its own line over a part of the road of another company which it does not control. In such a case the company is not required to disregard the conditions of its agreement, and does not violate the provisions of the act to regulate commerce by not receiving and discharging traffic on the tracks of the proprietary company, the sufficiency of the local service rendered by the latter not being questioned. (*Ib.*)

See Carriers.

EXTRAORDINARY FACILITIES AND RIGHTS OF WAY GIVEN TO PRIVATE LIVE-STOCK CARS.—(*Ib.*)

See Through Routes and Through Rates; Preference or Advantage; Traffic.

FAVOR IN TRANSPORTATION.

TO SHIPPERS OVER ONE DIVISION OF A CONSOLIDATED LINE.—

Rice, Robinson & Witherop *v.* Western New York and Pennsylvania Railroad Company.

TO COAL COMPANY, THE CAPITAL STOCK OF WHICH IS OWNED BY CARRIER.—

Coxe Brothers and Company *v.* Lehigh Valley Railroad Company.

TO OWNERS OF LIVE STOCK CARS.—

Shamberg *v.* Delaware, Lackawanna and Western Railroad Company *et al.*

FEDERAL AUTHORITY.

See Interstate Commerce.

FINDINGS OF FACT BY COMMISSION.

PRIMA FACIE EVIDENCE IN UNITED STATES COURTS.—

In re Alleged Excessive Freight Rates and Charges on Food Products.

CORRECTION AFTER REHEARING.—

Bates *v.* Pennsylvania Railroad Company *et al.*

See Cost of Carriage.

ERROR IN.—

Proctor & Gamble *v.* Cincinnati, Hamilton and Dayton Railroad Company *et al.*

COMMISSION TO DETERMINE WHAT ARE REASONABLE RATES.—

Coxe Brothers & Company *v.* Lehigh Valley Railroad Company.

See Judicial and Administrative Questions.

FIXED CHARGES.

In re Alleged Excessive Freight Rates and Charges on Food Products.

See Reasonable Rates.

FLOUR.

Kauffman Milling-Company *v.* Missouri Pacific Railway Company *et al.*

In re Alleged Excessive Freight Rates and Charges on Food Products.

King & Co. *v.* New York, New Haven and Hartford Railroad Company *et al.*

FOOD PRODUCTS.

In re Alleged Excessive Freight Rates and Charges on Food Products.

FOREIGN MERCHANDISE.

New York Board of Trade and Transportation Company *et al.* v.
 Pennsylvania Railroad Company *et al.*

FOURTH SECTION.

See Long and Short Haul Clause; Act to Regulate Commerce.

FREE CARTAGE OF FREIGHT.

INVESTIGATION CONCERNING.—

Third Annual Report of Interstate Commerce Commission.

WHEN UNLAWFUL.—

Stone & Carten v. Detroit, Grand Haven and Milwaukee Railway
 Company.

See Long and Short Haul Clause; Unjust Discrimination.

FREIGHT.

See Traffic; Continuous Carriage of Freights.

FRUITS.

Delaware State Grange, etc., v. New York, Philadelphia and
 Norfolk Railroad Company *et al.*

Boston Fruit and Produce Exchange v. New York and New Eng-
 land Railroad Company *et al.*

GEOGRAPHICAL LOCATION.

See Location.

GOVERNMENT AIDED RAILROAD AND TELEGRAPH LINES.

Report of Interstate Commerce Commission.

GROUP RATES.

Stone & Carten v. Detroit, Grand Haven and Milwaukee Rail-
 way Company.

ON COAL.—Principles relating to, as stated in Rend v. Chicago and North-Western
 Railway Company, 2 I. C. C. Rep., 540, and Imperial Coal Company v.
 Pittsburg and Lake Erie Railroad Company, *Ib.* 618, referred to.

Third Annual Report of Interstate Commerce Commission.

Kauffman Milling Company v. Missouri Pacific Railway Com-
 pany *et al.*

HEARING.

WHEN PRECLUDED BY CONTRACTS BETWEEN THE PARTIES.—

Haddock v. Delaware, Lackawanna and Western Railroad Com-
 pany.

WHEN NOT PRECLUDED BY CONTRACTS BETWEEN THE PARTIES. (*Ib.*)

See Practice; Evidence.

HOGS AND HOG PRODUCTS.

Board of Trade of the City of Chicago *v.* Chicago and Alton Railroad Company *et al.*

Squire & Co. *v.* Michigan Central Railroad Company *et al.*

IMPORT TRAFFIC.

New York Board of Trade and Transportation *et al.* *v.* Pennsylvania Railroad Company *et al.*

INSTRUMENTALITIES OF SHIPMENT OR CARRIAGE.

Rice, Robinson & Witherop *v.* Western New York and Pennsylvania Railroad Company.

Delaware State Grange, etc., *v.* New York, Philadelphia and Norfolk Railroad Company *et al.*

Shamberg *v.* Delaware, Lackawanna and Western Railroad Company *et al.*

Boston Fruit and Produce Exchange *v.* New York and New England Railroad Company *et al.*

INTERCHANGE OF TRAFFIC.

Third Annual Report of Interstate Commerce Commission.

See Facilities of Traffic; Traffic.

INTERSTATE COMMERCE.

WHAT IS NOT.—Where the transportation is from one point to another in the same State it is not interstate traffic, even though it be intended to be taken up by another carrier and delivered in another State.

In re Missouri and Illinois Railroad Tie and Lumber Company
v. The Cape Girardeau and Southwestern Railway Company.

Traffic originating in the State of New Jersey and destined to the city of New York, but delivered by the defendant to the consignees at Jersey City in New Jersey, upon which rates of defendant are made not to New York but to Jersey City, is not interstate so far as defendants conduct it, and the Commission has no jurisdiction over their rates.

New Jersey Fruit Exchange *v.* Central Railroad Company of New Jersey *et al.*

WHAT CONSTITUTES.—Commerce between points in the same State, but which in being carried from one place to another passes through another State, is interstate commerce, and subject to regulation by the provisions of the act to regulate commerce.

New Orleans Cotton Exchange v. Cincinnati, New Orleans and Texas Pacific Railway Company et al.

Boston Fruit and Produce Exchange v. New York and New England Railroad Company et al.

James & Mayer Buggy Company v. Cincinnati, New Orleans and Texas Pacific Railway Company et al.

A railroad company chartered by the State of Tennessee owns a short road wholly within that State, but has never owned any rolling stock or operated its roads; the road was used and operated as a means of conducting interstate traffic in coal by other companies owning connecting interstate roads. *Held*, That the shorter road thus used is one of the

WHAT CONSTITUTES.—Continued.

facilities and instrumentalities of interstate commerce, and the carriers using it are subject to the provisions of the act to regulate commerce.

Heck & Petree v. East Tennessee, Virginia and Georgia Railway Company.

In respect to such traffic the duties of such carriers to the public are the same without regard to the ownership or corporate control—the authority or means of its construction. (*Ib.*)

As one of the instrumentalities of shipment or carriage it must be accessible to all interstate shippers on equal and reasonable terms. The public can not be deprived of this right by the separate or joint action of the carriers, and they can not be permitted to use them for the purposes of discrimination between mine owners on its line. (*Ib.*)

An averment that the respondents were interstate common carriers subject to the act to regulate commerce was not of itself sufficient to warrant an inference, under a motion to dismiss a complaint for insufficiency, that wheat delivered at an elevator of the respondents was for interstate commerce.

White v. The Michigan Central Railroad Company et al.

TRANSPORTATION TO ADJACENT FOREIGN COUNTRY.—The provisions of the act to regulate commerce apply to foreign as well as domestic common carriers engaged in the transportation of passengers or property, for a continuous carriage or shipment, from a place in the United States to a place in an adjacent foreign country.

In re Acts and Doings of Grand Trunk Railway Company of Canada.

REGULATION OF, BY FEDERAL GOVERNMENT.—The grant to the Federal Government of the power to regulate interstate commerce is full and complete, and can not be narrowed or encroached upon by State authority, either directly or indirectly.

Leonard & Chappell v. Chicago and Alton Railroad Company.

The provisions of the act to regulate commerce, construed in the light of the principles that apply to interstate commerce as enunciated by the courts of the United States, must be understood as intended to regulate all the commerce subject to the exclusive jurisdiction of Congress, including the agents and instrumentalities employed and the commodities carried, with only the limitations found in the act itself.

Mattingly v. Pennsylvania Company.

The proviso in the first section that the provisions of the act shall not apply to the transportation of passengers or property, as to the receiving, delivery, storage, or handling of property wholly within one State, and not shipped to or from a foreign country from or to any State or Territory as aforesaid, that is, by continuous carriage or shipment, only excludes from regulation the purely internal commerce of a State, that which is confined within its limits, which originates and ends in the same State. (*Ib.*)

REGULATION OF.—The fact that by the action of certain State commissions a car is permitted to be loaded by the shipper at discretion without the car-lot rate being affected thereby is not a reason for adopting the like rule in interstate traffic if that course is found not to be most just and politic.

Leonard v. Chicago and Alton Railroad Company.

Chappell v. Chicago and Alton Railroad Company.

REGULATION OF.—Continued.

There is no such thing as a complete and harmonious regulation of interstate commerce by rail when a part of the carriers by rail are governed by one set of laws and other parts are left to the regulation of laws which are materially different.

Third Annual Report of Interstate Commerce Commission.

Duties of the Commission under the act to regulate commerce described.

In re Alleged Excessive Freight Rates and Charges on Food Products.

The power to regulate commerce among the States is absolute in Congress and rates on such commerce may be regulated by federal authority with reference to trade conditions and circumstances of localities without infringing the rights or immunities of such commerce under the Constitution.

Kaufman Milling Company *v.* Missouri Pacific Railway Company *et al.*

The act to regulate commerce specifically provides for the regulation of the transportation of foreign merchandise when brought from a foreign port of shipment to a port of entry of the United States and transported from such port of entry to a place within the United States upon a through bill of lading, or when transported from a foreign port to a port of entry of a foreign country adjacent to the United States and transported from such port of entry to a place of destination within the United States upon a through bill of lading.

New York Board of Trade and Transportation *et al. v.* Pennsylvania Railroad Company *et al.*

The regulation thus provided is such as regulates the rates, charges, facilities afforded and treatment of the foreign merchandise from the port of entry in either instance, as the case may be, to the place of destination of the merchandise within the United States, but it is not a regulation that extends to the control of rates made upon such foreign merchandise in the foreign port of shipment for its carriage to the port of entry of the United States or to the port of entry in a foreign country adjacent to the United States.—*Ib.*

A railroad company carrying coal as interstate traffic is the owner of the capital stock of a coal company, which under its charter holds lands, mines, buys and sells coal, and ships over the lines of said railroad company. *Held*, where such conditions result in violations of the act to regulate commerce, the only regulation practicable is the enforcement of the provisions of the act requiring rates to be reasonable.

Coxe Brothers & Company *v.* Lehigh Valley Railroad Company.

The Commission is required to determine what rates are reasonable as well as what are unreasonable.—*Ib.*

STATE REGULATION OF, HOW EFFECTED. (*Ib.*)

DECISIONS OF UNITED STATES COURTS RELATING TO.—

Third Annual Report of the Interstate Commerce Commission.

PRACTICAL WORKINGS OF REGULATION.—

Report of Interstate Commerce Commission.

INTERSTATE COMMERCE COMMISSION.

ABSTRACT QUESTIONS WILL NOT BE ANSWERED.—The Commission will not in general give decisions or undertake to construe the statute on *ex parte* applications.

See Abstract Questions.

POWER UNDER FOURTH SECTION OF ACT LIMITED.—The Commission has no power under the statute to grant special privileges or to suspend the fourth section of the act for the benefit of particular industries.

In re Iowa Barbed Steel Wire Company.

In re St. Louis Millers' Association.

While authorized to permit exceptions under certain circumstances indicated, the Commission is not empowered in any case to require exceptions.

Thatcher v. Delaware and Hudson Canal Company et al.

RELIEF UNDER FOURTH SECTION.—The Commission will not make an order for relief under the fourth section of the act, except upon verified petition, and after an investigation into the facts.

In re Southern Pacific Company.

In re Iowa Barbed Steel Wire Company.

TARIFFS UNDER FOURTH SECTION.—The Commission does not consider it necessary or expedient to make formal suggestions in respect to the framing of tariffs.

In re Tariffs of the Columbus and Western Railway Company.

PETITION NOT NECESSARILY ENTERTAINED.—A petition will not be entertained when the result will obviously be its dismissal, in conformity with principles announced in a case already decided.

La Crosse Manufacturers' and Jobbers' Union v. Chicago, Milwaukee and St. Paul Railway Company.

Petition not entertained when presented by a party having no apparent interest in the transaction, the affidavit of the real party being annexed.

Ottinger v. The Southern Pacific Company.

WHEN IT WILL NOT AWARD DAMAGES, OR COUNSEL OR ATTORNEY'S FEES.—*Council v. Western and Atlantic Railroad Company.*

JURISDICTION STRICTLY STATUTORY.—

In re Express Companies.

ORDER NOT RETROACTIVE.—

Farrar & Co. v. East Tennessee, Virginia and Georgia Railway Company.

JURISDICTION.—The Commission has no jurisdiction over the rates of traffic originating in New Jersey and destined to the city of New York, when the rates are only made to Jersey City and delivery to consignee is made at that point.

New Jersey Fruit Exchange v. Central Railroad Company of New Jersey et al.

INCREASE OF UNREASONABLY LOW RATES.—The Commission has no power to order rates to be increased upon the ground that they are so low that persistence in making them would be ruinous.

In re Chicago, St. Paul and Kansas City Railway Company.

The act to regulate commerce assumes that the carriers, in their power to make rates, have ample remedy to protect against rates which are unreasonably low. (*Ib.*)

IMMIGRANT TRANSPORTATION.—The matter of the reception of immigrants at the port of New York having been put by the laws of the State under the control of a Board of Commissioners of Emigration, and that Board having made such regulations as it has deemed desirable for the protection of the emigrants until they are ticketed and put on board railroad trains for their respective ultimate destination, and the Federal Government, through its legislative and executive departments, having

IMMIGRANT TRANSPORTATION.—Continued.

sanctioned the control by the Commissioners of Emigration, the Interstate Commerce Commission has no authority to interfere with their regulations.

Savery & Co. v. New York Central and Hudson River Railroad Company et al.

Not having the authority to interfere directly and control the Commissioners of Emigration, it can not do so indirectly by inhibiting the railroad companies from carrying out the arrangements made by the Commissioners with them. (*Ib.*)

COMPLAINT, WHEN NOT FAVORED.—A complaint made for the purpose of retaliation for a fancied wrong, as to get even with a carrier for the revocation of complainant's pass, does not commend itself to the Commission.

Slater v. Northern Pacific Railroad Company.

WHEN REHEARING WILL NOT BE GRANTED BY.—

In re Petition of Produce Exchange of Toledo.

NO POWER TO COMPEL JOINT ARRANGEMENT BETWEEN WATER AND RAIL LINES.—

In re Joint Water and Rail Lines.

NOTICE OF CHANGES IN JOINT RATES MUST BE GIVEN TO.—

In re Joint Tariffs, Circular.

INVESTIGATIONS BY.—Investigation by the Commission on its own motion concerning course pursued by certain carriers in respect to compliance with the provisions of the act to regulate commerce.

In re Tariffs and Classifications of Atlanta and West Point Railroad Company *et al.*

The Interstate Commerce Commission has authority to institute investigations and to deal with violations of the law independent of a former complaint or of direct damage to a complainant.

In re Acts and Doings of the Grand Trunk Railway Company of Canada.

A case was heard solely upon the respondent's motions to dismiss the complaint for insufficiency of its allegations to show violations of the act to regulate commerce, but the complainant having filed some depositions taken before the hearing of said motions, the Commission looked into this evidence with a view of seeing what light it shed upon the general claim of unlawful practice by the respondents, and upon the duty of the Commission to proceed against them on its own motion.

White v. The Michigan Central Railroad Company et al.

Where one makes complaint under the act to regulate commerce and sets up a personal grievance which he fails to prove, the Commission may, nevertheless, if a violation of law by the defendant appears, retain the case and take the necessary steps to bring such violation of law to an end.

Smith v. Northern Pacific Railroad Company.

Boston and Albany Railroad Company v. Boston and Lowell Railroad Company et al.

In re Underbilling.

POWER UNDER THE THIRD SECTION LIMITED.—The act to regulate commerce does not compel the making of through routes and through rates.

Little Rock and Memphis Railroad Company v. East Tennessee, Virginia and Georgia Railway Company et al.

Mattingly v. Pennsylvania Company.

POWER UNDER THE THIRD SECTION LIMITED.—Continued.

Capehart & Smith *v.* Louisville and Nashville Railroad Company *et al.*

See Act to Regulate Commerce; Practice; Report of Interstate Commerce Commission; Jurisdiction.

POWERS AND DUTIES.—In fixing reasonable rates the requirements of operating expenses, bonded debt, fixed charges, and dividend on capital stock from the total traffic are all to be considered, but the claim that any particular rate is to be measured by these as a fixed standard, below which the rate may not lawfully be reduced, is one rightly subject to some qualifications, one of which is, the obligations must be actual and in good faith.

In re Alleged Excessive Freight Rates and Charges on Food Products.

The act to regulate commerce makes it the duty of the Interstate Commerce Commission to execute and enforce the provisions of the act which require rates and charges to be reasonable. In the performance of this duty the Commission has authority to inquire into the management of the business of common carriers and to require the attendance and testimony of witnesses, the production of books and papers, tariffs and contracts relating to any matter under investigation. To enforce its authority in this respect the Commission must invoke the aid of a court of the United States.

In re Alleged Excessive Freight Rates and Charges on Food Products.

Amendment of Act.

When applied to by petition the Commission must investigate matters complained of, and must, to enforce the act, make investigations and prosecute inquiries instituted on its own motion. On making any investigation, the Commission is required to make a report in writing of its recommendations, conclusions, and the findings of fact on which its conclusions are based, which recommendations and conclusions, if not complied with, can only be enforced through the courts after trial, in accordance with established procedure. In such trial the facts found by the Commission, in conformity with the statute, have legal effect and are *prima facie* evidence; but the recommendations, conclusions, and orders of the Commission are of no binding force in the courts.

In re Alleged Excessive Freight Rates and Charges on Food Products.

The Commission having entered upon inquiry and investigation as to the reasonableness of transportation rates on food products and given notice of the time and place of taking testimony and afforded opportunity for calling and cross-examination of witnesses. *Held*, That such proceeding was a substantial compliance with the statute. (*Ib.*)

Has no power to order advance of rates, citing and affirming decision.

In re Chicago, St. Paul and Kansas City Railway Company.

Poughkeepsie Iron Company *v.* New York Central and Hudson River Railroad Company *et al.*

The Commission can not, for the purpose of discovering and preventing unjust discrimination by the respondent, which is both a shipper and a carrier of its own product via its line, compel it to keep separate accounts showing what it charges itself for transportation or what the cost of transportation to it is.

Haddock *v.* Delaware, Lackawanna and Western Railroad Company.

POWERS AND DUTIES.—Continued.

When classification is used as a device to effect unjust discrimination or as a means of violating other provisions of the statute, the act requires the Commission to so revise and correct such classification and arrangement as to correct the abuse.

Coxe Brothers & Company *v.* Lehigh Valley Railroad Company.
The act to regulate commerce declares every unreasonable charge unlawful, requires the Commission to enforce its provisions and confers the power, and imposes on the Commission the duty of determining what are reasonable rates as well as what are unreasonable. (*Ib.*)

AFTER REPARATION NO ORDER WILL BE MADE.—

New Orleans Cotton Exchange *v.* Louisville, New Orleans and Texas Railway Company.

OMISSION TO CHALLENGE SCHEDULES OF RATES ON FILE.—The omission or failure to challenge or disapprove the schedules of rates filed can not have the effect of making rates lawful which are unreasonable.

San Bernardino Board of Trade *v.* Atchison, Topeka and Santa Fé Railroad Company *et al.*

INFORMAL COMPLAINTS.—

McMillan & Co. *v.* Western Classification Committee.

FOURTH ANNUAL REPORT OF.

STATISTICAL REPORT OF.—

Report of Interstate Commerce Commission.

MAY ORDER DEPOSITIONS TO BE TAKEN.

STATE RAILROAD COMMISSION AS COMPLAINANT.—Railroad Commission of Florida *v.* Savannah, Florida and Western Railway Company *et al.*

See Practice.

IRON.

FIG.—

Poughkeepsie Iron Company *v.* New York Central and Hudson River Railroad Company *et al.*

JOINT TARIFFS.

PUBLICATION OF.—

In re Tariffs of Transcontinental Lines order for publication of joint tariffs.

NEED NOT BE DUPLICATED.—On receipt of a written statement from each corporation acknowledging the authority of any association, committee, or other traffic combination to issue tariffs in its behalf, schedules filed by such association, etc., will be credited to each road in the organization which so requests.

In re Joint Tariffs and Schedules.

FILING OF, WITH COMMISSION.—

First Annual Report of Interstate Commerce Commission.

EXPORT.—

Order for publication of.

CIRCULAR CONCERNING FILING.—

By roads located wholly in one State.

NOTICES OF CHANGES IN. (*Ib.*)

See Tariffs.

JUDICIAL AND ADMINISTRATIVE QUESTIONS.

Fourth Annual Report of Interstate Commerce Commission.

JURISDICTION.

Haddock *v.* Delaware, Lackawanna and Western Railroad Company.New York Board of Trade and Transportation *et al.* *v.* Pennsylvania Railroad Company *et al.*Boston Fruit and Produce Exchange *v.* New York and New England Railroad Company *et al.*James & Mayer Buggy Company *v.* Cincinnati, New Orleans and Texas Pacific Railway Company *et al.*

WHEN INADEQUATE.—

Little Rock and Memphis Railroad Company *v.* East Tennessee, Virginia and Georgia Railway Company *et al.*Mattingly *v.* Pennsylvania Company.

FOREIGN CARRIERS.—The Commission has jurisdiction of foreign carriers engaged in the transportation of passengers and property for a continuous carriage or shipment from a place in the United States to a place in adjacent foreign country.

In re Acts and Doings of Grand Trunk Railway Company of Canada.

IN PENAL CASES.—The jurisdiction of the Commission does not cover suits for penalties or criminal indictments.

Third Annual Report of the Interstate Commerce Commission.

LIKE KIND OF TRAFFIC.

DEFINITION.—

New York Board of Trade and Transportation *et al.* *v.* Pennsylvania Railroad Company *et al.*

LIVE STOCK.

Logan *et al.* *v.* Chicago and Northwestern Railway Company.

DUTY OF CARRIERS.—The duty of carriers in respect to the transportation of live stock is not fully discharged by receiving and delivering the same at a depot access to which must be purchased.

Keith *v.* Kentucky Central Railroad Company *et al.*USE OF YARDS.—When a carrier of live stock has undertaken to give to a stockyard company an exclusive right, with the privilege of charging lottage for the use of its yards, and complainants have established chutes of their own, adjacent to the track, through which they demand the right to receive and deliver stock for themselves and their customers, *Held*, That the conveniences so furnished being suitable, their demands must be complied with. (*Ib.*)

PATENT STOCK CARS.—Transportation of live stock in, considered.

Burton Stock Car Company *v.* Chicago, Burlington and Quincy Railroad Company *et al.*

CAR-LOT RATES.—

Leonard & Chappell *v.* Chicago and Alton Railroad Company.

HOGS AND HOG PRODUCT.—

Board of Trade of the City of Chicago *v.* Chicago and Alton Railroad Company *et al.*Squire & Co. *v.* Michigan Central Railroad Company *et al.*

CATTLE AND DRESSED BEEF.—

Squire & Co. *v.* Michigan Central Railroad Company *et al.*

TRANSPORTATION IN IMPROVED STOCK CARS.—

Shamberg *v.* Delaware, Lackawanna and Western Railroad Company *et al.*

See Cars; Preference or Advantage; Relative Rates; Unjust Discrimination.

LIVE-STOCK CARS.

See Cars.

LOCALITIES.

See Location; Preference or Advantage; Relative Rates; Unjust Discrimination.

LOCAL RATES.

Lehmann, Higginson & Co. *v.* Southern Pacific Company *et al.*

Poughkeepsie Iron Company *v.* New York Central and Hudson River Railroad Company *et al.*

King and Co. *v.* New York, New Haven and Hartford Railroad Company *et al.*

Capehart *et al. v.* Louisville and Nashville Railroad Company *et al.*

Coxe Brothers & Co. *v.* Lehigh Valley Railroad Company.

Hamilton & Brown *v.* Chattanooga, Rome and Columbus Railroad Company *et al.*

James & Mayer Buggy Company *v.* Cincinnati, New Orleans and Texas Pacific Railway Company *et al.*

See Through and Local Rates.

LOCATION.

ADVANTAGES AND DISADVANTAGES.—

Lehmann, Higginson & Co. *v.* Southern Pacific Company *et al.*
In re Alleged Excessive Freight Rates and Charges on Food Products.

Board of Trade of the City of Chicago *v.* Chicago and Alton Railroad Company *et al.*

Poughkeepsie Iron Company *v.* New York Central and Hudson River Railroad Company *et al.*

King & Co. *v.* New York, New Haven and Hartford Railroad Company *et al.*

Bates *v.* Pennsylvania Railroad Company *et al.*

Kauffman Milling Company *v.* Missouri Pacific Railroad Company *et al.*

Squire & Co. *v.* Michigan Central Railroad Company *et al.*

LONG AND SHORT HAUL CLAUSE.

CONSTRUCTION OF.—On questions of statutory construction, in such cases the Commission holds:

First. That the prohibition in the fourth section of the act to regulate commerce against a greater charge for a shorter than for a longer distance over the same line in the same direction, the shorter being included in the longer distance, as qualified therein, is limited to cases in which the circumstances and conditions are substantially similar.

CONSTRUCTION OF.—Continued.

Second. That the phrase, “under substantially similar circumstances and conditions,” in the fourth section, is used in the same sense as in the second section; and under the qualified form of the prohibition in the fourth section carriers are required to judge in the first instance with regard to the similarity or dissimilarity of the circumstances and conditions that forbid or permit a greater charge for a shorter distance.

Third. That the judgment of carriers in respect to the circumstances and conditions is not final, but is subject to the authority of the Commission and of the courts to decide whether error has been committed, or whether the statute has been violated. And in case of complaint for violating the fourth section of the act the burden of proof is on the carrier to justify any departure from the general rule prescribed by the statute, by showing that the circumstances and conditions are substantially dissimilar.

Fourth. That the provisions of section 1, requiring charges to be reasonable and just, and of section 2, forbidding unjust discrimination, apply when exceptional charges are made under section 4, as they do in other cases.

Fifth. That the existence of actual competition, which is of controlling force, in respect to traffic important in amount, may make out the dissimilar circumstances and conditions entitling the carrier to charge less for the longer than for the shorter haul over the same line in the same direction, the shorter being included in the longer in the following cases:

When competition is with carriers by water which are not subject to the provisions of the statute.

When the competition is with foreign or other railroads which are not subject to the provisions of the statute.

In rare and peculiar cases of competition between railroads which are subject to the statute, when a strict application of the general rule of the statute would be destructive of legitimate competition.

Sixth. The Commission further decides that when a greater charge in the aggregate is made for the transportation of passengers or the like kind of property for a shorter than for a longer distance over the same line in the same direction, the shorter being included in the longer distance, it is not sufficient justification therefor that the traffic which is subjected to such greater charge is way or local traffic and that which is given the more favorable rates is not.

Nor is it sufficient justification for such greater charge that the short-haul traffic is more expensive to the carrier, unless when the circumstances are such as to make it exceptionally expensive, or the long-haul traffic exceptionally inexpensive, the difference being extraordinary and susceptible of definite proof.

Nor that the lesser charge on the longer haul has for its motive the encouragement of manufactures or some other branch of industry.

Nor that it is designed to build up business or trade centers.

Nor that the lesser charge on the longer haul is merely a continuation of the favorable rates under which trade centers or industrial establishments have been built up. The fact that long-haul traffic will bear certain rates is no reason for carrying it for less than cost at the expense of other traffic.

In re Louisville and Nashville Railroad Company.

APPLICATION OF.—The Commission will not make an order the effect of which would be to bring other rates into conflict with the fourth section of the act to regulate commerce.

Thatcher v. Delaware and Hudson Canal Company et al.

APPLICATION OF.—Continued.

In an investigation made by the Commission, on its own motion, it was found that the greater charge for the transportation for a like kind of property for a shorter than for a longer distance over the same line in the same direction was unjustifiably made at many points. Results as ascertained stated, principles of the short-haul clause as announced by the Commission, *In re* Petition of Louisville and Nashville Railroad Company, again affirmed and applied, and recommendations made for further advances in the direction of conformity to the law without delay.

In the Matter of the Tariffs and Classifications of the Atlanta and West Point Railroad Company *et al.*

EXCEPTIONS UNDER.—When a railroad claims that the circumstances and conditions of long and short hauls on its lines are so dissimilar as to justify its making the greater charge on the shorter haul, the Commission will not on its petition decide on the justice of its claim; but will leave it to take the initiative in fixing rates, and will decide upon their justice and propriety when complaint is made by persons or localities who consider themselves injured.

In re Louisville and Nashville Railroad Company.

Facts and considerations stated which are not regarded as sufficient to warrant the deviation from the rule of the fourth section found in certain tariffs.

In re Tariffs of the Columbus and Western Railway Company.

EXCEPTIONS UNDER, MAY CAUSE VIOLATIONS OF SECOND AND THIRD SECTIONS.—Discriminations are made and undue advantages are given by the special tariffs in question, in giving different rates to places named and those not named; to manufactured articles named and those not named; to jobbers at places named and those not named; to manufactures, jobbers, and other dealers.

In re Tariffs of Transcontinental Lines.

PARTIES TO LONG-HAUL RATES.—All companies forming a line for long-haul traffic are properly made defendants in petition charging violation of fourth section.

Boston and Albany Railroad Company *v.* Boston and Lowell Railroad Company *et al.*

OVER THE SAME LINE.—By the words “same line” a physical line is meant, not a mere business arrangement; and one piece of road may be part of several lines. (*Ib.*)

FAST FREIGHT LINE.—The fact that the tariff for the long-haul traffic is made by a fast freight line does not justify a violation of the section. (*Ib.*)

COMPETITION.—The real and actual, not the possible, competition are the circumstances which should be considered when such greater charges are in question. (*Ib.*)

CIRCUITOUS ROUTE.—Under the circumstances stated, the fact that a line is long and circuitous, and is obliged to make concessions in its charges in order to share in traffic, will not make out the dissimilar circumstances and conditions indicated by the fourth section. (*Ib.*)

WHAT DOES NOT VIOLATE.—Rates named by a carrier do not violate the fourth section when it appears that on its own line the charges are greater for the longer distance, and the through charges by the shorter line are only made greater by the fact that the connecting road which has the shorter line makes higher rates than the connecting road which has the longer line.

Allen *v.* Louisville, New Albany and Chicago Railway Company.

Cases stated showing no violation of the long and short haul clause. (*Ib.*)

SEVERAL ROADS PARTICIPATING.—Where the purpose of a complaint is to compel a reduction of through rates from a western point over several roads to a seaboard city, all the roads constituting the line should be parties. (*Ib.*)

CONSTRUCTION CLAUSE STATED.—

First Annual Report of Interstate Commerce Commission.

DIFFERENCES IN CLASSIFICATION MAY VIOLATE.—

Violation of the fourth section of the act can be accomplished by differences in classification as well as by differences in tariff rates.

Martin v. Southern Pacific Company.

RAILROAD COMPETITION.—Canadian competition at the present time does not justify a higher charge from San Francisco to Denver than to Kansas City, it having been withdrawn at the latter point and the Canadian road now working upon an agreement as to rates with the roads in the United States at all points where it formerly competed. (*Ib.*)

The great distance of Denver from the Missouri River of itself denotes an impropriety in the charges to that point, which exceed those to Kansas City. (*Ib.*)

In re Louisville and Nashville Railroad Company (I. C. C. Rep., 31), affirmed and in accordance with the principles there laid down, the conclusion follows that the greater charge for the shorter haul, complained of in the present case, can not now be justified. (*Ib.*)

LOCALITIES.—The operation of the fourth section of the act controls the extent to which Missouri River rates extend into the interior of Nebraska and Kansas; Lincoln and other towns lying west of that line must accept their geographical situation and its consequences.

Lincoln Board of Trade v. Missouri Pacific Railway Company.

The general plan upon which rates are constructed from Chicago to St. Louis to Missouri River points and Nebraska points approved, no better system being as yet suggested. Difficulties which might result from throwing this system into confusion stated. (*Ib.*)

CARRIER CALLED UPON TO JUSTIFY VIOLATION AT PUBLIC HEARING.—A railroad company which, for causes not apparently affected by water competition or by the competition by carriers not subject to the act to regulate commerce, had issued rate sheets, which in many cases made for the transportation of like freights the greater charge for the shorter haul on the same line in the same direction, the shorter being included in the longer distance, was called upon to justify such rate sheets at public hearing.

In re Chicago, St. Paul and Kansas City Railway Company.

RAILROAD COMPETITION BETWEEN TERMINALS.—The showing by respondent that a competitor for business between the termini of its line makes charges for the transportation of freight which are below what are reasonable and just to the carrier itself does not alone make out the dissimilar circumstances and conditions entitling the respondent to make charges for the transportation of freight from one terminus to an intermediate station which are greater than those made for the transportation of like freights from the same terminus to the other. (*Ib.*)

A leading purpose of the act to regulate commerce is to prevent the giving of unjust preferences and advantages, as between localities in railroad transportation. This purpose would be defeated if any one carrier by making an unreasonably low rate to any locality would thereby entitle all other carriers competing with it to make on their lines greater charges

RAILROAD COMPETITION BETWEEN TERMINALS—Continued.

upon the shorter hauls to other stations than were made over the same line in the same direction to the locality thus favored. (*Ib.*)

MILK RATES.—The existing arrangement by which the same rate is charged for the transportation of milk from all points reached by the regular dairy milk trains of the defendant road found not to be illegal, and on the whole to be the best system that can be devised for the general good of all interested parties.

Howell *et al.* v. New York, Lake Erie and Western Railroad Company *et al.*

BURDEN OF PROOF.—Where, on a question of rates, it appears that higher rates are made upon the shorter hauls on the same line and in the same direction, the carrier making them must take the burden of proof to show their reasonableness.

Spartanburg Board of Trade v. Richmond and Danville Railroad Company *et al.*

PROCEEDINGS OF THE COMMISSION UNDER THE FOURTH SECTION STATED.—Second Annual Report of the Interstate Commerce Commission.

CONCESSION OF RATES BEFORE DECISION.—In several cases where a violation of the fourth section was complained of, the defendants, before decision was rendered, changed their tariffs so as to give to Lincoln the same rates from the Pacific coast that were given to Omaha. As this was all that could be claimed in respect to rates for the future, the Commission abstained from any expression of opinion and gave leave to withdraw the petitions.

Second Annual Report of Interstate Commerce Commission.

PASSENGER RATES.—Reductions in competitive passenger rates can not be legally made without at the same time reducing intermediate rates, as required by the fourth section of the act.

In re Passenger Tariffs and Rate Wars.

GROUP RATES.—Group rates may be properly made from a large number of mines composing a coal-mining district extending across the State of Illinois to points in Western Wisconsin, Minnesota, and Dakota, the distance from each part of the group by same route being substantially a fair equivalent of the distance of other parts, and commercial necessities being substantially the same for all.

Rend v. Chicago and Northwestern Railway Company.

A reduction of the rates on local shipments from Chicago to the proportion received by the Northwestern lines upon the division of the through rates would involve either a general reduction from the entire group under the short-haul clause of the law or an abandonment by defendant of the through rates in question, neither of which would benefit complainant, while both would do great injury to all other interests. (*Ib.*)

A group rate is not unlawful merely on account of differences in the geographical location of different producers and their respective distances from the market.

Imperial Coal Company *et al.* v. Pittsburgh and Lake Erie Railroad Company *et al.*

PROPORTIONS OF RATES TO PARTICIPATING ROADS.—The question of a greater charge in the aggregate for a shorter than for a longer distance over the same line in the same direction is not to be determined by the proportion allotted to different points on the line, but by the rate as an entirety. (*Ib.*)

THROUGH RATES.—Through rates are not necessarily illegal which, when divided between carriers, give them less than their local rate, *provided* that the through rate itself is not less than some one of the local, or unjustly discriminating against individuals or localities, or so low as to burden other business with part of the cost of the business upon which it is imposed.

Lippman & Co. v. Illinois Central Railroad Company.

DIFFERENT LINES OF THE SAME CARRIER.—The Chicago and Northwestern Railway Company has two routes or lines between Chicago and Sioux City, formed by its main line and different branch lines, and a greater charge for a shorter than for a longer distance, in the same direction, the shorter being included in the longer distance, on either of said routes or lines, is unlawful under the fourth section of the act to regulate commerce.

Logan et al. v. Chicago and Northwestern Railway Company.

TARIFFS AND CLASSIFICATIONS.—Investigations by the Commission on its own motion concerning course pursued by certain carriers in respect to compliance with the provisions of the act to regulate commerce.

In re Tariffs and Classifications of Atlanta and West Point Railroad Company et al.

Results, as ascertained, stated and recommendations made for further advances in the direction of conformity to the law. (*Ib.*)

Short-haul clause, principles giving application of, as heretofore announced by the Commission, again affirmed and applied. (*Ib.*)

WHEN COMBINED COMPETITION BY RAIL AND WATER DO NOT JUSTIFY.—The presence of combined rail and water competition at a longer distance point does not justify a greater charge for a shorter distance while the carrier maintains the shorter distance rate where such competition is of greater force and more controlling than at the longer distance point.

James & Abbot v. East Tennessee, Virginia and Georgia Railway Company et al.

WHERE FREIGHTS HAVE PAID LOCAL RATES.—Nor does the fact that the freight is lumber, which has paid a local rate over the roads of the defendants or of other railroad companies to the longer distance point, justify such greater charge for a shorter distance. (*Ib.*)

EMPTY CARS AND RETURN LOADS.—Nor is such greater charge justified by the fact that the lumber business of the roads of a connecting line or any of them was done in cars which carried machinery to the longer distance point when the profitable return loads were not always to be had. (*Ib.*)

BULK AND VALUE OF THE FREIGHT.—Nor does a difference in the bulk and value of the lumber justify such greater charge when the carriers in their published rate sheets put the lumber in the same class and at the same rate. (*Ib.*)

ENFORCEMENT OF.—

Third Annual Report of Interstate Commerce Commission.

FREE CARTAGE OF FREIGHTS.—If free cartage at a station has the effect to reduce a rate below the charge at another station nearer the point of shipment, it is unlawful as a less charge for a longer distance over the same line and in the same direction, the less being included within the greater.

Stone & Carten v. Detroit, Grand Haven and Milwaukee Railway Company.

The respondent company had a tariff schedule in effect grouping the rates from eastern points at Ionia and Grand Rapids in Michigan, Ionia being

FREE CARTAGE OF FREIGHTS.—Continued.

the shorter distance, and furnished free cartage at Grand Rapids and not at Ionia. *Held*, That the free cartage at Grand Rapids was in effect a rebate and unlawful. (*Ib.*)

WHEN EXCEPTIONAL RATES SHOULD BE DISCONTINUED.—The general rule contemplated by the statute of equitably graduated charges on like traffic with reasonable reference to the amount of the service, is just in itself and commonly most beneficial both to the carriers and to the public, and is only to be departed from when justified by exceptional conditions, and in such instances no longer than the conditions require.

Lehmann, Higginson & Co. v. Southern Pacific Company *et al.*

WATER COMPETITION.—Where the real competition for long-haul traffic is by railroad, the fact that there is also possible water competition will not of itself constitute the dissimilar circumstances and conditions which will support greater charges on shorter than on longer hauls.

Boston and Albany Railroad Company v. Boston and Lowell Railroad Company *et al.*

The mere fact that a point is situated upon a navigable stream held not sufficient of itself to justify the lesser charge for a longer haul to such a point. Water competition to furnish such justification should be actual, of controlling force, and in respect to traffic important in amount.

Harwell v. Columbus and Western Railway Company.

A lower charge for a longer distance for transportation of like traffic may be justified by actual water competition of controlling force, relating to traffic important in amount; and among the circumstances and conditions that may be considered in estimating the dissimilarity created by water competition are the character of the roads, the character of the traffic, the preponderance of empty cars moving in a direction in which the traffic must be taken, and the legitimacy of the competition by the rail carrier.

Lehmann, Higginson & Co. v. Southern Pacific Company.

The water competition which will justify a greater charge for a shorter distance by railroads must be actual. Possible competition will not justify such greater charge under the provisions of the fourth section of the act to regulate commerce.

San Bernardino Board of Trade v. Atchison, Topeka and Santa Fé Railroad Company *et al.*

Competition as a factor in making rates: The competition between all-water lines and the all-rail lines in the carriage of petroleum and its products from the port of New York to San Francisco, Oakland, Sacramento, Stockton, Marysville, San José, and San Diego, in the State of California, is actual and involves the transportation of traffic important in amount.

The competition between the part-rail and part-water lines, and the part-pipe lines and the part-water lines, on the one side, from the oil fields of Pennsylvania and Ohio, via the port of New York to San Francisco, Oakland, Sacramento, Stockton, Marysville, San José, San Diego, and Los Angeles, in California, in the carriage of petroleum and its products, on the one hand, and the competition of the all-rail lines on the other, in the carriage of the same kinds of property from and to the same points named, is a competition that is actual and involves the transportation of traffic important in amount. *Held*, On these facts and upon the authority of numerous decisions cited in this opinion, a dissimilarity of circumstances and conditions is thus shown to exist at the California points named as compared to the

WATER COMPETITION.—Continued.

circumstances and conditions which exist in the carriage of this traffic by the all-rail lines at intermediate points along such all-rail lines, and that it is such a dissimilarity of circumstances and conditions as is recognized by the act to regulate commerce and warrants the all-rail lines in making such just and reasonable rates as will enable them to meet the low rates and competition of the competing all-water lines and of the competing part-water and part-rail lines at said California points above named, and that in doing so the said all-rail lines are not obliged to make their rates at intermediate points along their lines as low as the rates forced upon them by the competition at said California points above named, viz: San Francisco, Oakland, Sacramento, Stockton, Marysville, San José, Los Angeles, and San Diego.

Rice v. Atchison, Topeka and Santa Fé Railroad Company et al.

A line of steamships plying between New York and Boston every other day makes the distance in twenty-four hours, does the largest part of the carrying trade of the grocers of Boston on shipments from New York; carries flour from New York to Boston for 8½ cents per hundred pounds; other lines, part water and part rail, known as the "Sound lines," make daily trips between New York and Boston, and carry flour from New York to Boston for 9 cents per hundred pounds; an all-rail line composed of the lines of the defendants, upon through billing and through rates to Boston alone on shipments from New York, makes daily runs between these points and carries flour from New York to Boston at 9 cents per hundred pounds. Each and all of these carriers are in actual competition for this business, and it involves the carriage of traffic important in amount. *Held*, Upon the facts that this is a case in which the circumstances and conditions in the carriage of this commodity are substantially dissimilar at Boston to what they are at Readville, an interior town about eight miles from Boston, on the line of the all-rail carriers, where no competition exists between the all-rail carriers and the water lines, and justifies the all-rail carriers in meeting the rate by the water line at Boston by charging 9 cents per hundred pounds on flour, while the combined local rates of the two rail carriers are higher upon shipments of this kind of freight from New York to Readville than they are upon the joint through rate from New York to Boston.

King & Co. v. New York, New Haven and Hartford Railroad Company et al.

The joint through rate to Boston on flour is one that is forced upon the all-rail carriers by the competition of a water line not subject to the act to regulate commerce, and is a rate, low as it is, in which there is a small margin of profit to the all-rail carriers, while the combined local rates to Readville, although considerably higher, relate to a service that is wholly different in all its material features, methods and aspects, rendered by the carriers under circumstances and conditions that are substantially dissimilar. (*Ib.*)

The circumstances and conditions which make a greater charge for a shorter distance lawful relate to the nature and character of the transportation service rendered by the carrier over the same line to the longer and shorter distance points.

James & Mayer Buggy Company v. Cincinnati, New Orleans and Texas Pacific Railway Company et al.

WATER COMPETITION.—Continued.

Water competition, to justify the greater charge for the shorter distance, must be competition in transportation to the longer-distance point and as to freight which, if not carried over the line on which it is located, would reach such destination by water transportation. (*Ib.*)

CIRCUMSTANCES AND CONDITIONS.—The words “substantially similar circumstances and conditions,” as found in the second and fourth sections of the act to regulate commerce, in certain important particulars define the rights and duties of carriers and the rights of shippers as well. For example: If the carrier claims to act under the compulsion of circumstances and conditions of his own creation or connivance in the making of an exceptional rate, then these will not avail him; or if the carrier claims to act under a compulsion of circumstances and conditions in the making of an exceptional rate which he could obviate by reasonably fair and just exertion on his part, then they will not avail him; but if the carrier is in good faith acting under a compulsion of circumstances and conditions beyond his control, not of his own connivance, and which he could not obviate by any reasonably fair and just effort on his part, and to avoid large loss adopts exceptional rates on a portion of his line, not unreasonable in themselves, and forced upon him by the action of an independent State railroad which is not subject to the act to regulate commerce, and which is operating a slightly shorter and competing line with his own, these are circumstances and conditions under the operation of the statute which justify him in adopting such exceptional rates thus forced upon him on this portion of his line.

Business Men's Association of the State of Minnesota *v.* Chicago, St. Paul, Minneapolis and Omaha Railway Company.

SUFFICIENCY OF COMPLAINT; BURDEN OF PROOF.—Where complaint alleges that a greater charge, in the aggregate, for the transportation of a like kind of property, is made for a shorter than for a longer distance, over the same line in the same direction, the shorter being included in the longer, and that an unlawful preference is thereby given one locality over another. *Held*, Complaint is sufficient to put the carriers on proof that the services were rendered under such dissimilar circumstances as to justify the greater charge.

San Bernardino Board of Trade *v.* Atchison, Topeka and Santa Fé Railroad Company *et al.*

TRANSPORTATION OF FOOD PRODUCTS.—The margin of profit on food products is too small to justify the imposition on any part of them of other than its own necessary burdens, and before the higher charge can be imposed on a shorter distance State, it will be necessary to repeal the fourth section of the interstate-commerce law, and the common law as well.

In re Alleged Excessive Freight Rates and Charges on Food Products.

SAME CHARGE FOR LONGER AND SHORTER DISTANCES.—There is nothing in this provision which prevents the roads from imposing the same freight charges on shorter distance traffic which is not found in the common law requiring reasonable rates. (*Ib.*)

The “blanket rate,” as it is called, by which the same rate is charged by the all-rail lines from the city of New York, and from all points in the oil-producing regions in the States of Pennsylvania, Ohio, and West Virginia, and from all the territory in the United States east of the ninety-seventh meridian of longitude, in the carriage of petroleum and its products to

SAME CHARGE FOR LONGER AND SHORTER DISTANCES.—Continued.

San Francisco, Oakland, Sacramento, Stockton, Marysville, San José, Los Angeles, and San Diego, in the State of California, is a rate that has its origin in and is based upon actual competition for the carriage of this large traffic, on the one side, by the all-rail line, and on the other side, by the lines part rail and part water, and also, in some instances, all-water lines, and also in other instances, part-pipe lines and part-water lines; and it is a rate of which petitioner has no right to complain as being a violation of the fourth section of the act to regulate commerce, because it does not appear from the evidence that it is a violation of that section.

Rice v. Atchison, Topeka and Santa Fé Railroad Company et al.
Ordinarily longer distances warrant higher charges, but carriers may lawfully accept the same aggregate, though less profitable, rates for longer distances, provided such carriers do not subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage.

James & Mayer Buggy Company v. Cincinnati, New Orleans and Texas Pacific Railway Company et al.

DECLARATION BY CARRIER THAT IT IS A LOCAL CARRIER TO CERTAIN STATIONS ON ITS LINE.—Goods shipped from Cincinnati, Ohio, to points in the State of Georgia are interstate traffic, and all the roads forming a part of the line over which such goods are carried to their destination are engaged in interstate commerce and are subject to the act to regulate commerce. Where two or more roads forming a continuous connecting line between points in different States bill and carry interstate traffic through to certain stations on the last road forming such line, neither the roads together nor any one of them can evade the obligations of the fourth section of said act by declaring that as to such traffic destined to such station on such terminal road it is a local carrier. (*Ib.*)

PERISHABLE FREIGHT.—The complaint was that the defendants' charges for the transportation of specified perishable articles of truck-farming from stations on their lines of railroad to Jersey City and Philadelphia were excessive and unreasonable, and that the charges were higher for the shorter distances from their stations on the Peninsula in Delaware and Maryland than for the longer distance from Norfolk, Va. It was found that the charges on certain articles specified from stations on the Peninsula were excessive and a reduction was ordered. The reduced rates are, however, in many cases still considerably above the rates on the same articles from Norfolk, and, the showing not being sufficient to enable the Commission to determine satisfactorily how far the lower Norfolk rates were justified by the differences in the conditions and circumstances, that subject is left for future consideration.

Delaware State Grange, etc., v. New York, Philadelphia and Norfolk Railroad Company et al.

RATES LOWER TO BASING POINT THAN TO SHORTER DISTANCE LOCAL POINT.—

Hamilton & Brown v. Chattanooga, Rome and Columbus Railroad Company et al.

LONG AND SHORT HAULS DISCUSSED.—

Report of Interstate Commerce Commission.

MANUFACTURER'S DESCRIPTION.

MAY BE ACCEPTED BY CARRIERS FOR PURPOSES OF CLASSIFICATION AND RATES.—

- Warner *v.* New York Central and Hudson River Railroad Company *et al.*
- Andrews Soap Company *v.* Pittsburgh, Cincinnati and St. Louis Railway Company *et al.*
- Beaver & Co. *v.* Pittsburgh, Cincinnati and St. Louis Railway Company *et al.*

MANUFACTURING INDUSTRY.

- Board of Trade of the City of Chicago *v.* Chicago and Alton Railroad Company *et al.*
- Poughkeepsie Iron Company *v.* New York Central and Hudson River Railroad Company *et al.*
- Bates *v.* Pennsylvania Railroad Company *et al.*
- Squire & Co. *v.* Michigan Central Railroad Company *et al.*

MARKETS.

CREATION OR DESTRUCTION OF PROFITABLE MARKETS BY CARRIERS UNLAWFUL.

- Rice, Robinson & Winthrop *v.* Western New York and Pennsylvania Railroad Company.
- Delaware State Grange, etc., *v.* New York, Philadelphia and Norfolk Railroad Company *et al.*
- Squire & Co. *v.* Michigan Central Railroad Company *et al.*

MERCANTILE SOCIETY.

- Boston Fruit & Produce Exchange *v.* New York and New England Railroad Company *et al.*
- See* Complainant.

MERCHANDISE.

FOREIGN AND DOMESTIC—

- New York Board of Trade and Transportation *et al. v.* Pennsylvania Railroad Company *et al.*
- See* Traffic.

MILEAGE RATES.

- See* Rates; Reasonable Rates, Long and Short Haul Clause.

MILEAGE TICKETS.

ISSUANCE OF.—Authorized by section 22 of the act to regulate commerce.

- Larrison *v.* Chicago and Grand Trunk Railway Company.
- Associated Wholesale Grocers of St. Louis *v.* Missouri Pacific Railway Company.

Authorization of, does not relieve carriers from requirements of reasonableness and impartiality as to rates charged, which are prescribed by other sections of the act. (*Ib.*)

ISSUANCE OF.—Continued.

Special contract limiting liability of carrier in mileage tickets to commercial travelers will not justify a lower rate than is charged the public, when same terms are not offered to all who will not accept such special contracts. (*Ib.*)

Must be sold impartially. (*Ib.*)

ABUSES IN ISSUING.—Existing methods respecting excursion and mileage tickets considered, and found to lead to various abuses.

In re Passenger and Rate Wars.

MUST BE IMPARTIALLY OFFERED.—

In re Passenger Tariffs.

RATES MUST BE PUBLISHED. (*Ib.*)

APPLICATION OF THE LAW TO.—The general requirements of the act to regulate commerce, as amended, are as applicable to mileage, excursion, or commutation tickets as to any others. (*Ib.*)

MILLING IN TRANSIT.

NO AUTHORITY TO COMPEL.—Milling in transit having long been permitted by common carriers to millers at some points, and a large quantity of the transits being said to be out which can be and are made use of to give the millers at Minneapolis an advantage in rates over those of St. Louis, the Commission can not correct the wrong by giving or authorizing special rates to the St. Louis millers.

In re St. Louis Millers' Association.

In re Iowa Barbed Steel Wire Company.

A FAVOR IN TRANSPORTATION.—Whether or not the system known as "milling in transit" be objectionable under the act to regulate commerce, it is clear that the Commission has no power to compel the granting of such a favor when the privilege would be in the nature of a concession to a particular locality.

Crews v. Richmond and Danville Railroad Company.

La Crosse Manufacturers' and Jobbers' Union v. Chicago, Milwaukee and St. Paul Railway Company.

MILLING IN TRANSIT RATES AS A PART OF A THROUGH RATE DISCUSSED.—

Chamber of Commerce of the City of Milwaukee *v. Flint and Pere Marquette Railroad Company et al.*

MISAPPREHENSION.

IN THE PURCHASE OF TICKETS.—

Sanger v. Southern Pacific Company et al.

NOTICE.

TIME AND PLACE OF TAKING TESTIMONY.—

In re Alleged Excessive Freight Rates and Charges on Food Products.

OPERATING EXPENSES.

In re Alleged Excessive Freight Rates and Charges on Food Products.

See Reasonable Rates.

ORDER.

ENFORCEMENT OF.—

In re Alleged Excessive Freight Rates and Charges on Food Products.

VACATED AFTER REHEARING.—

Bates *v.* Pennsylvania Railroad Company *et al.*

OF REPARATION.—

New Orleans Cotton Exchange *v.* Louisville, New Orleans and Texas Railway Company.

TO SHOW CAUSE.—

Hamilton & Brown *v.* Chattanooga, Rome and Columbus Railroad Company *et al.*

OVERCHARGE.

MADE THROUGH MISAPPREHENSION OF PASSENGER.—

Sanger *v.* Southern Pacific Company.

ON BOOKS.—In a case where a claim for overcharge on shipment of books was filed, and it appeared that the agent failed to bill the freight over the route directed by the shipper, it was held that the initial carrier should refund to the shipper the amount of the overcharge occasioned by the oversight of the freight agent.

Pankey *v.* Richmond and Danville Railroad Company *et al.*

See Passengers.

PACKING HOUSE PRODUCT.

Board of Trade of the City of Chicago *v.* Chicago and Alton Railroad Company *et al.*

Squire & Co. *v.* Michigan Central Railroad Company *et al.*

PARTIES.

PERSONAL INTEREST.—One may complain on public grounds of a violation of the act to regulate commerce which amounts to a public grievance, without having any personal interest to be affected by the violation except as one of the public.

Vermont State Grange *v.* Boston and Lowell Railroad *et al.*

VOLUNTARY ASSOCIATION.—A voluntary State association of persons engaged in an industrial pursuit may be a complainant in proceedings charging a violation of the long and short haul clause of the act. (*Ib.*)

COMPLAINT UNDER FOURTH SECTION.—All the roads constituting the line which makes the through rate complained of should be parties to a complaint which seeks to compel a reduction of such through rates.

Allen *v.* Louisville, New Albany and Chicago Railway Company.

ALL INTERESTED ENTITLED TO BE HEARD.—Parties affected are entitled to be notified in case a change in rates is asked. No order correcting unjust discrimination made for want of proper parties; amendments allowed, etc.

Harwell *v.* Columbus and Western Railway Company.

WHEN INITIAL CARRIER MAY BE MADE SOLE DEFENDANT.—In a proceeding to correct a classification of freight made by the initial carrier, which freight, before reaching its destination, must pass over the roads of several carriers, it is proper to make all such carriers parties; but if the initial carrier alone is made defendant, the proceeding is not for that reason defective. An order requiring that carrier to make the correction will

WHEN INITIAL CARRIER MAY BE MADE SOLE DEFENDANT.—Continued.

be effectual for the purposes of all subsequent consignments, and there is no difficulty in its being complied with without asking the consent of others.

Hurlburt *v.* Lake Shore and Michigan Southern Railway Company.

Hurlburt *v.* Pennsylvania Railroad Company.

ABSENCE OF PARTY INTERESTED.—Where the relation of any carrier to the matter complained of is such that it is in whole or in part materially responsible for the alleged grievance, and has direct interest in any investigation of the subject-matter involved, that carrier should be a party to the proceeding, and if not a party no relief can be given against it.

Riddle, Dean & Co. *v.* Pittsburg and Lake Erie Railroad.

ABSENCE OF NECESSARY.—Effect on decision.

Poughkeepsie Iron Company *v.* New York Central and Hudson River Railroad Company *et al.*

Hamilton & Brown *v.* Chattanooga, Rome and Columbus Railroad Company *et al.*

ABSENCE OF NECESSARY PARTY.—When a question of rates as between two carriers is involved, the Commission will express no opinion upon it in a case to which one of the carriers is not a party.

Kentucky and Indiana Bridge Company *v.* Louisville and Nashville Railroad Company.

No opinion will be expressed on rates which have been abandoned even though the parties request it. Such a course is particularly advisable and proper when it is apparent that other parties than the one complained of are interested in the question and have not had the opportunity to be heard upon it.

Chicago, St. Louis and Pittsburg Railroad Company *v.* Cleveland, Cincinnati, Chicago and St. Louis Railway Co.

American Wire Nail Company *v.* Cincinnati, New Orleans and Texas Pacific Railway Company *et al.*

PERSONS INTERESTED NEED NOT BE MADE FORMAL.—Persons having an interest in a question pending before the Commission will be allowed to appear and be heard when the case is being submitted, without their being made formal parties. (*Ib.*)

WHO ARE NECESSARY.—The reasonableness of rates can not be fairly determined in a proceeding to which some of the parties responsible for such rates are not parties.

New Orleans Cotton Exchange *v.* Cincinnati, New Orleans and Texas Pacific Railway Company *et al.*

When the reasonableness of through rates agreed upon by several connecting lines is complained of it is necessary to make all such lines parties defendant.

Michigan Congress Water Company *v.* Chicago and Grand Trunk Railway Company.

The rule laid down on this subject in Allen *v.* Louisville, New Albany and Chicago Railway Company (1 I. C. C. Rep., 199), and in Harwell *et al.* *v.* Columbus and Western Railway Company *et al.* (1 I. C. C. Rep., 237), and in Riddle, Dean & Co. *v.* Pittsburgh and Lake Erie Railroad Company (1 I. C. C. Rep., 490), cited and affirmed. (*Ib.*)

WHEN NECESSARY PARTIES WILL BE BROUGHT IN.—When carriers other than the respondents of record are committing the same violations of the act

WHEN NECESSARY PARTIES WILL BE BROUGHT IN.—Continued.

to regulate commerce as the respondents, an order may issue against the respondents and the cause to be held for the purpose of bringing such other carriers into it to be proceeded against unless they comply with the order.

Bates v. Pennsylvania Railroad Company *et al.*

INTERESTED.—Entitled to be heard. (*Ib.*)

McMillan and Company v. Western Classification Committee,
276.

CARRIERS CONCERNED IN MATTERS COMPLAINED OF SHOULD BE MADE PARTIES DEFENDANT; CLASSIFICATION COMMITTEE; COMPLAINT, FORMAL AND INFORMAL.—Whether a complaint to the Interstate Commerce Commission in regard to classification and rates is formal or informal, it is not enough that it be made against a classification committee or a rate committee concerning grievances alleged to be perpetrated by carriers in the matter of classification and rates, who are represented to some extent by such classification or rate committee in making rates, but which carriers are not bound to accept such classification and rates and do not accept them any further than they see proper to do so; in such a case the carriers who, it is alleged, are guilty of perpetrating the grievances should be made the parties defendant to the complaint and the complaint should point them out by name. (*Ib.*)

The Western Classification Committee in the making of classification and rates represents about seventy-five railroad companies, but the classification and rates made by this committee are merely recommendatory to the carriers in the association and it is not obligatory upon the carriers to accept and operate them; some of the carriers upon such articles, for example, salted hides and pelts in less than carloads, make commodity rates of their own upon the classification and rates different from those prepared and recommended by the Classification Committee, while other carriers do not; upon a complaint by a shipper against the Classification Committee alone, upon this statement of facts, it is evident that no investigation or order that the Commission could make would have any binding effect whatever upon the carriers. (*Ib.*)

WHEN ABSENT PARTIES WILL BE CITED IN AFTER DECISION.—

Hamilton & Brown v. Chattanooga, Rome and Columbus Railroad Company *et al.*

TAKING OF DEPOSITIONS BY EITHER UNDER ACT TO REGULATE COMMERCE AS AMENDED.

See Practice ; Complaint.

PATENT MEDICINES.

Myers v. Pennsylvania Company.

Warner v. New York Central and Hudson River Railroad Company *et al.*

PEACHES.

Delaware State Grange, etc., v. New York, Philadelphia and Norfolk Railroad Company *et al.*

Boston Fruit and Produce Exchange v. New York and New England Railroad Company *et al.*

PARTY RATES.

ILLEGAL.—Party rates lower than contemporaneous rates for single passengers constitute unjust discrimination and are illegal.

In re Passenger Tariffs.

Pittsburgh, Cincinnati and St. Louis Railway Company *v.* Baltimore and Ohio Railroad Company.

PASSENGERS.

DISCRIMINATION IN SALE OF TICKETS.—

Larrison *v.* Chicago and Grand Trunk Railway Company.

Michigan Central Railroad Company *v.* Chicago and Grand Trunk Railway Company.

Associated Wholesale Grocers of St. Louis *v.* Missouri Pacific Railway Company.

Smith *v.* Northern Pacific Railroad Company.

COLORED PEOPLE.—May be properly assigned separate cars on equal terms. Such a separation of the races does not create undue prejudice or unjust preference.

Councill *v.* Western and Atlantic Railroad Company.

Heard *v.* Georgia Railroad Company.

Complainant, a colored man, paid the same fare as other first-class passengers, and it was only fair dealing and common honesty that he should have the security and convenience of travel for which his money had been taken. The fact being found that he did not, the defendant was held guilty of violation of the act to regulate commerce. (*Ib.*)

IMMIGRANTS.—

Savery & Co. *v.* New York Central and Hudson River Railroad Company *et al.*

REFUNDING OF EXCESS CHARGES TO.—A misapprehension under which a party has paid for one journey in two sections, whereby the cost of the transportation has been made more than it would have been had a through ticket been purchased, may lawfully be corrected by return of the excess, though the carriers were without fault and only charged for each portion of the journey the regular rates.

Sanger *v.* Southern Pacific Company *et al.*

WHEN RATES FOR PARTIES ARE UNLAWFUL.—

Pittsburgh, Cincinnati and St. Louis Railway Company *v.* Baltimore and Ohio Railroad Company.

PAYMENT OF ADDITIONAL TRAIN RATES BY.—

Sidman *v.* Richmond and Danville Railroad Company.

RIGHT OF CARRIERS TO SELECT CARS FOR TRANSPORTATION OF.—

Worcester Excursion Car Company *v.* Pennsylvania Railroad Company.

See Carriers; Cars; Preference and Advantage; Rates; Unjust Discrimination.

PENDING PROCEEDINGS

The amendment of March 2, 1889, expressly provides that it shall have no application to pending proceedings, and as this proceeding was pending at that time, no reparation can be awarded, and the remedy of the petitioner is in the courts.

Rawson *v.* Newport News and Mississippi Valley Company *et al.*

PERISHABLE FREIGHT.

SPECIAL TRAIN SERVICE.—

Delaware State Grange, etc., *v.* New York, Philadelphia and Norfolk Railroad Company *et al.*

Boston Fruit and Produce Exchange *v.* New York and New England Railroad Company *et al.*

TRANSPORTATION CHARGES. (*Ib.*)

PETITION.

See Complaint; Parties; Practice.

PETROLEUM AND ITS PRODUCTS.

Rice, Robinson & Witherop *v.* Western New York and Pennsylvania Railroad Company.

Rice *v.* Atchison, Topeka and Santa Fé Railroad Company *et al.*

PORT OF ENTRY.

IN UNITED STATES.—

New York Board of Trade and Transportation *et al. v.* Pennsylvania Railroad Company *et al.*

IN ADJACENT FOREIGN COUNTRY. (*Ib.*)

PORTS OF TRANSSHIPMENT.

New York Produce Exchange *v.* New York Central and Hudson River Railroad Company *et al.*

Third Annual Report of Interstate Commerce Commission.

PRACTICE.

EVIDENCE REQUIRED.—When issues of fact are presented a decision can not be made without some evidence upon which to base it.

Leonard *v.* Union Pacific Railway Company.

ABANDONMENT OF PROCEEDING.—Petitioner not appearing or being heard from after receiving copy of defendant's answer to his complaint, the Commission assumes that he is satisfied and dismisses the case.

Jackson *v.* St. Louis, Arkansas and Texas Railway Company.

CASES AT ISSUE.—Proceeding to be in the simplest form consistent with reasonable certainty; no replication required. When facts are not agreed upon depositions may be taken on notice, and the work should be entered upon immediately after answer. Assignment for hearing made on request of either party. Parties will be heard orally or upon briefs, as they prefer.

In re Procedure in Cases at Issue.

QUESTIONS OF LAW.—Dilatory proceedings considered objectionable and a single speedy hearing desired in every case; all proper questions will then be entertained, whether jurisdictional or relating to the merits of the controversy.

In re Procedure Concerning Questions of Law.

COMPLAINT TO, AND ADJUDICATION BY, COMMISSION.—

First Annual Report of Interstate Commerce Commission.

ORDER CHANGING RATES NOT RETROACTIVE.—After decision petitioners raised the question whether they were not entitled to have payments refunded which had been made in excess of the rate now fixed. *Held*, That an order changing the rate was not retroactive, but would reduce the rate from the time of promulgation only.

Farrar & Co. v. East Tennessee, Virginia and Georgia Railway Company.

THEORY.—A case can not be decided on a theory which is neither presented by the complaint nor advanced at the taking of the testimony.

Martin et al. v. Chicago, Burlington and Quincy Railroad Company et al.

SEPARATE PROCEEDINGS.—When the evidence presented in the case is insufficient to determine the reasonableness of rates complained of, the Commission will investigate the question in a separate proceeding under the statute by which all the parties will have opportunity to bring forward all the evidence and be fully heard.

Business Men's Association of the State of Minnesota v. Chicago and Northwestern Railway Company.

COLLATERAL INQUIRY.—When the evidence is introduced for the single purpose of the bearing it may have upon the reasonableness of a rate which would be inadmissible for any other purpose and presents a collateral inquiry, the carrier not being allowed to controvert it except as to the reasonableness of rates, the Commission will not determine the collateral inquiry until an opportunity has been furnished the parties to be heard in a proceeding such as is provided for by the statute. (*Id.*)

PUBLIC HEARINGS.—In cases of the violation of the fourth section not apparently affected by water competition or by competition of carriers not subject to the act, notice of the hearing was ordered published, that competing carriers and the public generally might have opportunity to attend and be heard.

In re Chicago, St. Paul and Kansas City Railway Company.

CASE RETAINED FOR A FURTHER SHOWING.—On the question of the reasonableness of rates charged for transportation of milk and cream from producing points to Jersey City, the case was retained for further evidence.

Howell et al. v. New York, Lake Erie and Western Railroad Company et al.

As to the other rail-carrier defendants in this proceeding, which are certain southern and southwestern railroads, it appears in a general way that there is water competition at Memphis, Vicksburg, New Orleans, Mobile, and Galveston, but upon this point the evidence is not sufficiently clear to enable the Commission to determine the extent to which this competition at each of these points is actual, and whether it involves traffic important in amount; and the Commission therefore retains the case as to these defendants, and will hereafter notify the parties as to the time when and the place where all such further evidence will be heard upon these points that the parties may desire to offer.

George Rice v. The Atchison, Topeka and Santa Fé Railroad Company et al.

AMENDMENT WHEN NOT NECESSARY.—Amendment is not necessary to bring in matters that would have been the subject of proof under the complaint as originally filed.

Delaware State Grange, etc., v. New York, Philadelphia and Norfolk Railroad Company et al.

PLACE OF HEARING.—A case involving local rates ordered to be heard at a central point in the territory immediately affected by the rates. (*Ib.*)

DECISION.—In deciding a case against one or more carriers who are charged with making rates which are unjustly discriminating in a certain line of traffic, the decision made upon the facts of a particular case does not necessarily govern rates in other sections of the country where the facts bearing upon them may be altogether different.

In re Relative Tank and Barrel Rates on Oil.

No question is presented in this case as to whether the rates charged by the all-rail carriers at intermediate are just and reasonable or not, but, on the contrary, the case was so presented and tried as to distinctly indicate to the Commission that no decision was desired in regard to this matter, for no evidence was offered concerning it by either side; and the case being one that is *inter partes* commenced, prosecuted, and defended by counsel for the respective parties, the Commission has heard, considered, and determined it as presented by the parties and their counsel.

George Rice *v.* The Atchison, Topeka and Sante Fé Railroad Company *et al.*

The decision in this case applies only to the present situation in the territory in question, and it is not intended to lay down a permanent rule for the future nor to apply elsewhere.

Kauffman Milling Company *v.* Missouri Pacific Railway Company *et al.*

The act requires the Commission to determine what are reasonable rates as well as what are unreasonable; also to revise and correct abuses in classification.

Coxe Brothers & Co. *v.* Lehigh Valley Railroad Company.

Delaware State Grange, etc., *v.* New York, Philadelphia and Norfolk Railroad Company *et al.*

DECISION AND REPORT.—The Commission does not report evidence which is only cumulative, or which is immaterial or irrelevant, or mere details of evidence embraced in substantial facts stated. (*Ib.*)

The statute is construed as dealing with the substance of things and as contemplating speedy methods of procedure which come at once to the very right of questions arising in the transportation of persons and freight. (*Ib.*)

APPLICATION FOR REHEARING.—The Commission will promptly and carefully examine an application for a rehearing with a view to the immediate correction of an error of law or fact found to exist, but will not direct a rehearing unless satisfied that it might have the effect of changing the result of what the Commission has already done.

Riddle, Dean & Co. *v.* Pittsburgh and Lake Erie Railroad.

REHEARING.—After a complaint has been heard and determined by the Commission, and no party to the proceedings has applied for a rehearing, an application for a rehearing made by others who are not parties will not be granted.

In re Produce Exchange of Toledo.

If upon a new or different complaint it should appear that any conclusion of the Commission in the case so decided has been erroneous, the Commission would feel it to be a duty to correct such conclusions. (*Ib.*)

When a question of general public interest is involved, the Commission, in its own discretion and in furtherance of justice, may open a case to give parties the benefit of a more extended investigation of the same subject-matter in other pending cases.

REHEARING.—Continued.

Rice, Robinson & Witherop v. Western New York and Pennsylvania Railroad Company.

A petition to reopen a case that has been decided and have a rehearing, should show *prima facie* that some material testimony has been overlooked or misapprehended, or some error in the findings of fact or conclusions of law.

Myers, survivor, v. Pennsylvania Company *et al.*

When the application is insufficient in these respects, and only asks for a re-discussion of the facts and law already considered, with no offer of new evidence that can change the result, the application will be denied. (*Ib.*)

SUBPŒNAS FOR PRODUCTION OF BOOKS, PAPERS, AND DOCUMENTS.—Rules governing application for.

Rice v. Cincinnati, Washington and Baltimore Railroad Company *et al.*, *in re* Application of Petitioner.

When application for, will be denied.

Haddock v. Delaware, Lackawanna and Western Railroad Company.

ABANDONMENT OF TARIFF.—Where a tariff complained of is abandoned by the carriers for a long period of time before the complaint was made and shortly after the tariff was put in force, the Commission will not make an order requiring the carriers to cease and desist from enforcing such tariff, because such an order would be vain and useless.

Rawson v. Newport News and Mississippi Valley Company *et al.*

REPLICATION.—The rules of practice before the Commission do not require nor allow the filing of a replication.

Oregon Short Line v. Northern Pacific Railroad Company.

CONCESSION OF RATES BEFORE DECISION TERMINATES THE CONTROVERSY.

Bishop v. Duval, receiver, etc.

Harris v. Duval, receiver, etc.

Lincoln Board of Trade v. Union Pacific Railway Company *et al.*
Manufacturers and Jobbers' Union of Mankato v. Minneapolis and St. Louis Railway Company.

Chicago, St. Louis and Pittsburg Railroad Company v. Louisville, New Albany and Chicago Railway Company.

American Wire Nail Company v. Cincinnati, New Orleans and Texas Pacific Railway Company *et al.*

REPARATION IN PENDING PROCEEDING.—The amendment of March 2, 1889, expressly provides that it shall have no application to pending proceedings, and as this proceeding was pending at the time, no reparation can be awarded, and the remedy of the petitioner is in the court.

Rawson v. Newport News and Mississippi Valley Company *et al.*

AMENDED RULES AND FORMS.—

Third Annual Report of Interstate Commerce Commission.

COMPLAINT, WHEN INSUFFICIENT.—When a complaint charged that the respondent railroad companies, which were common carriers subject to the act to regulate commerce, were accustomed to make deductions of from five to ten pounds of wheat per load from the true weight when delivered by the farmer to the buyer at the elevators of the respondents, and gave receipt to the farmer for the amount as thus diminished, upon which the latter was paid by the buyer, thereby suffering a loss to the extent of such reduction, but failed to charge that the wheat was delivered for interstate transportation, or, indeed, for transportation anywhere, it was *held*, that the complaint was insufficient in substance to

COMPLAINT, WHEN INSUFFICIENT.—Continued.

show violation of the act to regulate commerce, and that the respondents were entitled to have it dismissed on their motions to that effect, but that the dismissal should be without prejudice.

White v. Michigan Central Railroad Company et al.

An averment that the respondents were interstate commerce carriers subject to the act to regulate commerce was not of itself sufficient to warrant an inference under a motion to dismiss a complaint for insufficiency, that wheat delivered at an elevator of the respondents was for interstate commerce. (*Ib.*)

WHEN NECESSARY PARTIES WILL BE BROUGHT IN.—(*Ib.*)

CASES INVOLVING CLASSIFICATION AND RATES.—Whether a complaint in regard to classification and rates is formal or informal, it is not enough that it be made against a classification committee or a rate committee concerning grievances alleged to be perpetrated by carriers. The Commission will not proceed in any investigation until the complaint is put into such shape that localities and dealers as well as the carriers complained of, who should be named, can have an opportunity to be heard.

McMillan & Co. v. The Western Classification Committee.

CONTRACTS PRIOR TO PASSAGE OF ACT.—Upon complaint of unreasonable rate, on coal from Pennsylvania mines east to Hoboken and north and west to Buffalo and other points, and that the carrier gives to itself as a shipper of coal undue preference and advantage, the defendant relied upon certain contracts between itself and complainant, which were entered into before the enactment of the act to regulate commerce, as controlling the charges to complainant and as precluding the jurisdiction of the Commission in the premises. No claim is made that the validity of these contracts has been impaired or affected by the passage of the act, and the Commission carefully abstains from expressing any opinion on that point. *Held*, That complainant is precluded, by the terms of the contract for shipping coal to Hoboken, from going into evidence to show that the rate on his coal to Hoboken ought to be different from that fixed by the contract; and witnesses and evidence asked for to that end are immaterial.

Haddock v. Delaware, Lackawanna and Western Railroad Company.

The contracts providing that complainant may ship coal to points north and west, on the same terms and rates that respondent for the time being gives other persons, do not preclude complainant from showing that such rates are unjust, oppressive, or unreasonable. Complainant is therefore entitled to a hearing upon that question. (*Ib.*)

COMPLAINT, WHEN SUFFICIENT UNDER FOURTH SECTION—

San Bernardino Board of Trade v. Atchison, Topeka and Santa Fé Railroad Company et al.

King & Co. v. New York, New Haven and Hartford Railroad Company et al.

NOTICE OF HEARING. TESTIMONY.—REGULARITY OF PROCEEDING.—The Commission having entered upon inquiry and investigation as to the reasonableness of transportation rates on food products, and given notice of the time and place of taking testimony, and afforded opportunity for calling and cross-examination of witnesses. *Held*, That such proceeding was a substantial compliance with the statute.

In re Alleged Excessive Freight Rates and Charges on Food Products.

ABSENCE OF NECESSARY PARTIES.—Effect on decision.

Poughkeepsie Iron Company *v.* New York Central and Hudson River Railroad Company *et al.*

McMillan and Company *v.* Western Classification Committee.

Hamilton & Brown *v.* Chattanooga, Rome and Columbus Railroad Company *et al.*

INTERESTED PARTIES ENTITLED TO BE HEARD.—(*Ib.*)

CASES RETAINED FOR FURTHER EVIDENCE.—

Rice *v.* Atchison, Topeka and Santa Fé Railroad Company *et al.*

Delaware State Grange, etc., *v.* New York, Philadelphia and Norfolk Railroad Company *et al.*

AMENDMENT OF COMPLAINT AFTER DEMURRER.—

Capehart *et al. v.* Louisville and Nashville Railroad Company *et al.*

REHEARING.—Former order vacated.

Bates *v.* Pennsylvania Railroad Company *et al.*

PETITION FOR REHEARING.—A petition or motion for rehearing can not be granted on mere allegation of error in the findings of fact, and such a petition or motion must be supported by proof showing *prima facie* at least that there was such error. The affidavits in this case fail to make such showing.

Proctor & Gamble *v.* Cincinnati, Hamilton and Dayton Railroad Company *et al.*

SUBPŒNAS *duces tecum*.—ORAL AND DOCUMENTARY EVIDENCE.—THIRD PARTIES.—The application for subpoenas *duces tecum* is denied. As applicable to contracts and papers of third persons, not before the Commission, it is denied on the ground of the injustice that might be done such persons; and generally (for the present at least) it is denied on the ground that the material facts can be proven by the testimony of witnesses, without the aid of documentary evidence; although respondent will be expected to produce for purposes of examination, any books and papers of its own, material to the controversy. (*Ib.*)

PRODUCTION OF DOCUMENTARY EVIDENCE UNDER ACT TO REGULATE COMMERCE AS AMENDED.

ATTENDANCE OF WITNESSES.

Amendment of act to regulate commerce.

CONCESSION OF RELIEF.—

New York Board of Trade and Transportation *et al. v.* Pennsylvania Railroad Company Co. *et al.*

New Orleans Cotton Exchange *v.* Louisville, New Orleans and Texas Railway Company.

ORDER TO SHOW CAUSE AFTER DECISION TO INTERESTED CARRIERS NOT PARTIES.—

Hamilton & Brown *v.* Chattanooga, Rome and Columbus Railroad Company *et al.*

ORDER OF REPARATION.—Where a carrier corrects the inequality of rates complained of, and thus makes all the reparation asked in the complaint, or that the Commission could afford, no order is required and none will be issued.

New Orleans Cotton Exchange *v.* Louisville, New Orleans and Texas Railway Company.

See Burden of Proof; Evidence; Complaint; Complainant; Parties.

WHEN COMPLAINANT, A STATE RAILROAD COMMISSION, HAS CEASED TO EXIST.—

1. The act to regulate commerce makes it the duty of this Commission "to investigate any complaint forwarded by the Railroad Commissioner or Railroad Commission of any State or Territory at the request of such Commissioner or Commission." The complaint in this case was brought by and in the name of the Railroad Commission of Florida, but the real parties in interest are large classes of growers, buyers, and shippers in the State of Florida. Since the complaint was filed the nominal complainant has ceased to exist. *Held*, That the repeal of the law creating the Railroad Commission of Florida could not operate as a withdrawal or dismissal of the complaint, that Commission having been only an instrument for the transmission of the complaint to this Commission, and having fully performed that function before an end was put to its existence. To abate or dismiss the proceeding on that ground would be to sacrifice substance to form in contravention of the spirit and letter of the act to regulate commerce and of the rules of courts of law in analogous cases. *Held, further*, That under the provision of the act to regulate commerce authorizing this Commission to "institute any inquiry on its own motion in the same manner and to the same effect as though complaint had been made," neither complaint nor complainant is necessary to confer jurisdiction.

Railroad Commission of Florida *v.* Savannah, Florida and Western Railway Company *et al.*

See Amendments ; Parties ; Petition ; Railroad Company ; Parties ; Interstate Commerce Commission ; Complaints : Rules of Practice.

PREFERENCE OR ADVANTAGE.

WHEN UNDUE AND UNREASONABLE.—Rates and charges not unreasonably high of themselves can be so adjusted in their relations to each other as to produce the undue preference and unreasonable advantage which the third section of the act to regulate commerce makes unlawful.

Boards of Trades Union, etc., *v.* Chicago, Milwaukee and St. Paul Railway Company.

Raymond *v.* Chicago, Milwaukee and St. Paul Railway Company.

Preference and advantage become undue and unreasonable when the results are such as to effect some tangible injury to the complaining parties.

Howell *et al.* *v.* New York, Lake Erie and Western Railroad Company *et al.*

MEASURE OF PROOF REQUIRED TO JUSTIFY.—When water competition is brought forward as a justification of preference and advantage, the same measure of proof is required to overcome the presumption that such distinctions are undue and unreasonable as is required to work an exception under section 4 of the act.

Harwell *v.* Columbus and Western Railway Company.

COLORED PEOPLE.—Colored people who buy first-class tickets must be furnished with accommodations equally safe and comfortable with other first-class passengers. A car furnished complainant found to be only second class in comforts for travel, and *held* that he was thereby subjected to undue preference and unreasonable disadvantage, in violation of section 3 of the act to regulate commerce.

Councill *v.* Western and Atlantic Railroad Company.

Heard *v.* Georgia Railroad Company.

RAILROAD MATERIAL.—A producer of railroad material (*e. g.*, ties) is entitled to sell it when he wishes in the best available market. Common carriers are forbidden to attempt to prevent this by applying disproportionate or unreasonable rates.

Reynolds v. Western New York and Pennsylvania Railroad Company.

IN SHIPMENT OF COAL.—The selection of either goods or customers is forbidden to common carriers. Less desirable traffic, which is ordinarily the subject of transportation and not dangerous to handle, must be accepted upon reasonable terms, as well as that which is more desirable.

Riddle, Dean & Co. v. New York, Lake Erie and Western Railroad Company.

GROUP RATES ON COAL.—Through rates by way of Chicago to points in western Wisconsin, Minnesota, and Dakota, from mines in the eastern part of a coal mining district extending across the State of Illinois are necessarily made the same with the group rates established on other routes from the same district, and their discontinuance would simply leave the market open to the product of other Illinois mines at the same transportation charged.

Rend v. Chicago and North-Western Railway Company.

Under the exceptional circumstances requiring such through rates, shippers locally from Chicago, of Ohio and Pennsylvania coal, can not justly insist upon rates no higher than the division of such through rate which appertains to the lines running northwest from that city, the circumstances under which the through rate is made being such that it can not be differently adjusted. (*Ib.*)

Such a reduction of the rates on local shipments from Chicago would involve either a general reduction from the entire group under the short-haul clause of the law, or abandonment by defendant of the through rates in question, neither of which would benefit complainant, while both would do great injury to all interested. Under such circumstances the preference is not undue nor is the advantage complained of unreasonable. (*Ib.*)

On complaint of a group rate on coal from a district covering a radius of 40 miles around Pittsburg. *Held*, That the rate in itself not being unreasonable, it does not appear that it subjects the complainants to undue prejudice, although it gives an unreasonable preference to the more distant mines.

Imperial Coal Company et al. v. Pittsburg and Lake Erie Railroad Company et al.

Actual undue preference or advantage of which the rate was the cause must result to the more favorably situated producers to render a group rate unlawful. (*Ib.*)

CONSIDERATIONS WHICH AFFECT THE QUESTION.—In determining the question of undue prejudice from a rate, distance is only one of the factors, and other material facts, such as character and quality of the commodity, cost of production, extent and nature of the competition in the business itself, and by other transportation lines, and the interest of the public in the use of the commodity and its marked cost, are to be considered. (*Ib.*)

WHAT DOES NOT AFFECT THE QUESTION.—Municipal subscriptions or gratuities do not affect the question of undue preference under section 3 of the act to regulate commerce.

Lincoln Board of Trade v. Burlington and Missouri River Railroad Company in Nebraska et al.

DISPARITY IN RATES.—Disparity in existing rates to Lincoln and Omaha found to correspond so closely with the difference in distance that no change is required on that ground. (*Ib.*)

TRANSPORTATION OF PETROLEUM OILS.—When for a special traffic, *e. g.*, the transportation of petroleum oils, a carrier provides rolling stock for one method, but does not provide it for another, for which it publishes rates, the terms on which such rolling stock is to be provided should be uniform and published with the rate sheets, and can not lawfully be left to be the subject of bargain and different terms in the case of different shippers.

Rice v. Louisville and Nashville Railroad Company.

When two methods for the transportation of an article of merchandise are nominally offered by the carrier, for only one of which it offers rolling stock, and for the other of which the shipper must supply his own rolling stock, at considerable expense, it can not be said that the resorting to the latter by the shipper is so far a matter of choice that he has no concern in charges for transportation in the other mode; such charges should be relatively just and equal. (*Ib.*)

It is properly the business of a carrier by railroad to supply rolling stock for the freight he offers or proposes to carry; and if the diversities and peculiarities of traffic are such that this is not always practical, and the consignor is allowed to supply it for himself, the carrier must not allow its own deficiencies in this particular to be made the means of putting at unreasonable disadvantage those who may use in the same traffic all the facilities which it supplies. (*Ib.*)

Upon the facts of this case it is found and held that there is an unlawful preference given by the carriers in favor of oil shipments in tank-car lots, as against like shipments in barrels, car-load lots, which is ordered to be corrected, and the mode prescribed by which this must be done, giving equal rates upon each per pound.

Scofield et al. v. Lake Shore and Michigan Southern Railway Company et al.

The other issue upon which this case was tried, namely, that an unlawful preference was shown to the Standard Oil Trust and the companies, firms, and associations, affiliated to the said Standard Oil Trust by the all-rail carriers in making low rates for them and for their benefit to certain California points where there were receiving-tank stations erected by the said Standard Oil Trust and its affiliated companies, firms, and associations, and then by shipment afterwards from said receiving-tank stations to adjacent localities on low rates made for short local hauls in California, whereby an unlawful preference was shown to said trust and its affiliated firms, companies, and associations, is not sustained by the evidence in this proceeding.

Rice v. The Atchison, Topeka and Santa Fé Railroad Company et al.

TANK CARS AND BARRELS.—When a carrier engages in transporting oil in tanks, and also in barrels conveyed in box cars, in car loads, and charges for the weight of the barrel as well as the oil carried by the box-car mode of transportation, but for the weight of the oil only when carried in tanks, it unjustly discriminates between shippers, and subjects the traffic to undue prejudice and disadvantage.

Rice, Robinson & Witherop v. Western New York and Pennsylvania Railroad Company.

WHAT CONSTITUTES UNLAWFUL.—To render a preference of one over another unlawful, under the act to regulate commerce, it is not necessary that it should be accomplished by any "device," and it is equally true that the ingenuity of man can not invent a device for the perpetration of an unlawful preference on the part of a carrier engaged in interstate commerce without incurring the penalties prescribed by the statute. (*Ib.*)

DRIED FRUIT AND RAISINS.—Classification of dried fruit and raisins, both California products, in different classes, taking different rates, works an injustice to shippers.

Martin *v.* Southern Pacific Company *et al.*

BETWEEN LOCALITIES.—The fact that under rates which are impartially arranged as between large and small towns, one large distributing center may have an advantage over another in competition for the business of the small towns, does not make out a case of undue preference in favor of one distributing center as against the other. Impartial rates are not rendered illegal by their effect upon the business of localities.

Martin *et al. v.* Chicago, Burlington and Quincy Railroad Company *et al.*

Wheat and Flour.

Kauffman Milling Company *v.* Missouri Pacific Railway Company.

Hogs and Hog Products.

Board of Trade of the City of Chicago *v.* Chicago and Alton Railroad Company *et al.*

Squire & Co. *v.* Michigan Central Railroad Company *et al.*

Where a reduced rate is made at the terminus of a through route, under the compulsion of competition a town not located on the line of the through route, but reached over a lateral connecting road, has a disadvantage of situation entailing some additional expense, and a reasonably higher rate to such town than the forced competitive rate to the more distant terminus of the through route, is not unjust discrimination.

Lehmann, Higgins and Co. *v.* Southern Pacific Company *et al.*

When a carrier engages in transportation for which, by reason of competitive conditions or for purposes of its own, it receives low rates from some patrons and at some localities, it accepts the legal obligation to give impartial service to other patrons and at other localities that sustain similar relations to the traffic.

Manufacturers' and Jobbers' Union of Mankato *v.* Minneapolis and St. Louis Railway Company *et al.*

UNREASONABLY LOW RATES.—A leading purpose of the act to regulate commerce is to prevent the giving of unjust preferences and advantages as between localities, in railroad transportation. This purpose would be defeated if any one carrier, by making unreasonably low rates to any locality, would thereby entitle all other carriers competing with it to make on their lines greater charges upon the shorter hauls to other stations than were made over the same line in the same direction, to the locality thus favored.

In re Chicago, St. Paul and Kansas City Railroad Company.

PROOF OF DAMAGE NECESSARY.—Without some proof of damage resulting to complainants, an advantage in rates, as related to distance, is not necessarily undue or unreasonable, no substantial difference in expense appearing to exist.

Howell *et al. v.* New York, Lake Erie and Western Railroad Company *et al.*

FREE TRANSPORTATION OF PERSONS.—When a free pass is given to a discharged employé of the company on the assumption that he might still be regarded as an employé, but which was never used, and expired by limitation in the hands of the party to whom it was issued and which was produced before the Commission as an unused instrument in a proceeding in which complaint of its issue was made: *Held*, That facts did not show that a breach of the third section of the act had been committed, no free transportation whatever having been had, and the party being entitled to none, according to the terms of the instrument as it then was.

Griffie v. Burlington and Missouri River Railroad Company in Nebraska.

RELATIVE RATES.—Rates must be relatively fair and reasonable as between localities in essential respects similarly situated, not according to any rule of mathematical precision, but in substance and in fact, having regard to the geographical and relative positions of the localities, so that one will not be favored to the unjust prejudice of the other.

Detroit Board of Trade et al. v. Grand Trunk Railway of Canada et al.

A tariff naming a rate from one locality lower than that enjoyed by its neighbor, when the circumstances are the same, tenders a preference or advantage to the first, and when any shipper is damaged by the exaction of an additional burden, the preference becomes undue and unreasonable, unless it can be justified upon some sound and substantial ground.

In re Tariffs of Transcontinental Lines.

DIFFERENCE IN THROUGH RATES.—The difference between proportions of through rates along the same line should be fairly reasonable in amount and properly guarded in their application, and not such as to injure or suppress business in one locality in order that it may be stimulated and built up in another.

Chamber of Commerce of the City of Milwaukee v. Flint and Père Marquette Railroad Company et al.

TRANSPORTATION OF MINERAL WATER.—On complaint of unreasonable rates, *Held*, that neither the defendant nor any of its officers or agents have been engaged in combinations with connecting lines or other parties to prevent complainant from obtaining reasonable rates and facilities for the transportation of its mineral water or to give other mineral waters a preference in rates and facilities over those accorded to complainant.

Michigan Congress Water Company v. Chicago and Grand Trunk Railway Company.

MALEVOLENCE.—That defendant's officials and agents have not acted in a malevolent spirit toward complainant in throwing obstructions in the way of its transporting mineral water over defendant's line and its connecting lines. (*Ib.*)

IN SHIPMENTS OF CORN.—Defendant's tariff sheet in force from Nebraska points to Turner, Ill., directed corn destined to the seaboard to be billed to Turner at different rates when destined to different seaboard points. The corn was carried from Nebraska to Chicago, where the rebilling and transferring was done. No shipments could be made under this tariff from Iowa points: *Held*, that as billed the shipment was to Turner; that by billing at different rates to Turner an illegal preference was given, and that Iowa grain-growers were subjected to unreasonable disadvantages in marketing corn.

Logan et al. v. Chicago and Northwestern Railway Company.

WHITE AND COLORED PASSENGERS.—It is the lawful duty of a carrier to afford to passengers engaged in interstate travel over its line equal comforts, accommodations, and equipment, and protection of the law, without regard to race, color or sex, against undue prejudice and disadvantage from disorderly conduct on the part of other passengers or persons.

Heard v. Georgia Railroad Company.

PREJUDICE AND DISADVANTAGE TO SHIPPERS OF CORN PRODUCTS.—When an existing classification and rate are not shown to operate injuriously to the carriers from a given point or to give undue advantage to shippers, a change is not justifiable that materially injures an important industry and a class of shippers at that point who have there built up the industry in reliance upon a continuation of the previous classification and rate first established and long maintained by the carriers themselves, without complaint from any quarter. Such change in classification and rate would subject the persons engaged in the industry and the locality and the particular traffic to unreasonable disadvantage within the prohibition of section three of the act to regulate commerce.

Bates v. Pennsylvania Railroad Company et al.

A discrimination between the rate on corn and its direct products from a given locality resulting from a reduction of the rate on corn below the rate on its direct products, which subjected persons in that locality engaged in the business of manufacturing corn into its direct products and of selling the same to unreasonable prejudice or disadvantage, and was without necessity or advantage to the carrier, or any reason founded on the character or condition of the traffic: *Held*, to be in violation of section three of the act to regulate commerce, notwithstanding the new rate on corn was open to all persons equally and with equal service. (*Ib.*)

Since the first hearing the defendants have reduced the differential between corn and its products to 2½ cents per hundred pounds. The complainants claimed there should be no difference. The evidence produced at the rehearing satisfied the Commission upon grounds stated in the opinion, that the former order should be vacated and that no further order should now be made. (*Ib.*)

CAR-LOAD AND LESS THAN CAR-LOAD QUANTITIES.—A difference in rates upon car loads and less than car loads of the same merchandise between the same points of carriage so wide as to be destructive to competition between large and small dealers, especially upon articles of general and necessary use, and which, under existing conditions of trade, furnish a large volume of business to carriers, is unjust and violates the provisions and principles of the act.

Thurber et al. v. New York Central and Hudson River Railroad Company et al.

Leggett & Co. v. New York Central and Hudson River Railroad Company et al.

Greene v. New York Central and Hudson River Railroad Company et al.

RECEIPT AND DELIVERY OF TRAFFIC AT LOCAL STATIONS.—The Union Pacific Railway Company entered into a contract with the Rock Island Railway Company by which for a valuable consideration the latter company acquired the right to run its through trains from and to points on its own road over the road of the Union Pacific Company between Kansas City and Topeka, upon the condition that no intermediate business should be done by the Rock Island Company on any part of the line used under the agreement, the Union Pacific Company retaining control

RECEIPT AND DELIVERY OF TRAFFIC AT LOCAL STATIONS.—Continued.

of the road and of its operation, and supplying transportation accommodations for the intermediate points between Kansas City and Topeka. Upon complaint made against the Rock Island Company by a resident of Lawrence, one of the intermediate towns, for refusing to perform the ordinary duties of a common carrier in receiving and discharging traffic at his town: *Held*, That the duties of the Rock Island Company were limited by its rights and powers under its contract and that it was not bound to do the local business prohibited by the agreement on the line used by its through trains.

Alford v. Chicago, Rock Island and Pacific Railway Company.

THROUGH AND LOCAL RATES.—The proportion of one carrier in a through rate upon a long haul often and frequently well may be considerably less than its local rate for hauling the same freight over its own line, without there being any unjust discrimination, unlawful preference, or extortion involved in such a method.

New Orleans Cotton Exchange v. Illinois Central Railroad Company *et al.*

New Orleans Cotton Exchange v. Cincinnati, New Orleans and Texas Pacific Railway Company.

TRANSPORTATION OF COTTON IN FLAT AND BOX CARS.—The Commission will not order the rail carrier to transport cotton on flat cars instead of in box cars to New Orleans, the rate being the same on each, no injury being shown to have resulted to petitioners or to that city, or to any shipper or producer from the carriage in box cars. (*Ib.*)

EXCURSION CARS.—Where a railroad company has by an arrangement with one car company procured a sufficient supply of sleeping and excursion cars for all the business of its lines, and refuses to haul excursion cars of other private car companies over its track for this reason, it can not be forced to do so against this objection.

Worcester Excursion Car Co. v. Pennsylvania Railroad Company.

Unless the contrary is imposed as conditions in the grant of its charter, the right to construct and operate a railroad is a franchise in its nature exclusive, not held in common with the public, though the grant of the franchise is for the public use; and the tracks of a railroad are not a common highway upon which any one can enter and use his own cars for transportation purposes against the objection of the company owning the tracks. (*Ib.*)

OBLIGATIONS OF STATE CARRIERS.—When a State carrier engages in interstate commerce it becomes a national instrumentality for the purposes of such commerce, and is subject to regulations prescribed by the national authority. It can not limit its obligations in that business, but must serve the business offered impartially and without preference or discrimination.

Mattingly v. Pennsylvania Company.

TANK AND BARREL SHIPMENTS OF PETROLEUM AND ITS PRODUCTS.—When a carrier engages in transporting oil in tanks, and also in barrels conveyed in box cars, in car loads, and charges for the weight of the barrel as well as the oil carried by the box-car mode of transportation, but for the weight of the oil only when carried in tanks, it unjustly discriminates between shippers, and subjects the traffic to undue prejudice and disadvantage.

TANK AND BARREL SHIPMENTS OF PETROLEUM AND ITS PRODUCTS—Continued.

Rice, Robinson & Witherop *v.* The Western New York and Pennsylvania Railroad Company.

BETWEEN CARRIERS BY WATER.—Several rail carriers engaged in interstate commerce each cross or touch a navigable river leaving a large space of territory along and near the river and between their lines that can be served only by steamboats, and in connection with steamboats these rail carriers carry freight to and receive it from this territory at points where they touch or cross the river respectively, but as to it they make through rates with only one line of steamboats and refuse to make such through rates with other steamboats on the river. *Held*, That under the law the rail carriers may do this and that it is not unjust discrimination nor unlawful preference. Citing *Napier v. The Glasgow and South-western Railway Company*, 1 *Railway and Canal Cases*, 292.

Capehart & Smith *v.* The Louisville and Nashville Railroad Company *et al.*

In such a case all that a steamboat has a right to demand, with which the rail carriers have refused to make through rates and to do through billing, is that the rail carriers shall receive from and deliver to such steamboat freight for transportation at their published local tariff rates. (*Ib.*)

WHEAT AND WHEAT FLOUR.—Upon complaint by millers of Missouri, supported by millers of Kansas, against a differential of 5 cents per 100 pounds, and claiming an equal rate on wheat and flour carried from Missouri and Kansas into Texas, the differential of 5 cents was not found to be unlawful, but it was decided that a differential exceeding 5 cents per 100 pounds is unlawful, but the decision was confined to the territory in question and expressly stated that it was not intended to lay down a permanent rule for the future nor to apply elsewhere.

Kauffman Milling Company *v.* Missouri Pacific Railway Company *et al.*

See Facilities of Traffic; Rates; Reasonable Rates; Relative Rates; Unjust Discrimination; Long and Short Haul Clause.

PATENT MEDICINES.—Upon complaint that patent medicines should be classified the same as ale, beer, and mineral water: *Held*, That in view of the higher market value of the medicines and the smaller volume of traffic they supply, a higher classification than for the other articles named is not unreasonable.

Warner *v.* New York Central and Hudson River Railroad Company *et al.*

SOAPS.—Upon complaint by a manufacturer of soap, advertised and sold as toilet soap, charging unjust discrimination by classifying his product in the second class with other toilet soaps, and not in the fourth class with laundry soaps, as he claims it should be classed for the reason that his toilet soap is not substantially superior to soap put on the market by certain other manufacturers as laundry soap, which, under that description, is transported at lower rate: *Held*, That the manufacturer's description of his product for commercial purposes as an article of superior grade and value warrants its classification accordingly, and carriers are not required to classify and transport it as a laundry soap.

Andrews Soap Company *v.* Pittsburg, Cincinnati and St. Louis Railway Company *et al.*

BETWEEN LOCALITIES LOCATED ON DIFFERENT DIVISIONS OF CONSOLIDATED LINE.—

Rice, Robinson & Witherop *v.* Western New York and Pennsylvania Railroad Company.

PIG IRON; LOCALITIES.—Pig iron is one of the lowest classes of freight, and the rates on that article complained of in this proceeding are not found to be unjust and unreasonable either in themselves, or relatively, as charged petitioner compared with rates from Youngstown and Cleveland, Ohio.

Poughkeepsie Iron Company *v.* New York Central and Hudson River Railroad Company *et al.*

STEAMBOAT LINES; THROUGH BILLING AND THROUGH RATES.—

Capehart *et al.* *v.* Louisville and Nashville Railroad Company *et al.*

SURGICAL CHAIRS.—The mere fact that one article is of more general use and therefore shipped in greater quantities than another, when each as a rule is shipped in less than car-load quantities, and of no considerable difference in bulk, weight, and value, and of no appreciable difference in expense of handling and of haul, constitutes in itself no reason why the first should receive a lower rate than the last. In such a case mere quantity, not measured by any recognized unit of quantity adapted to carriage, and lessening the expense of handling and carriage, can not be allowed to affect rates in the transportation of property.

Harvard & Co. *v.* Pennsylvania Company *et al.*

CORN AND CORN PRODUCTS.—After rehearing and reduction by defendants of differential by lowering rate on corn products, the former order was vacated.

Bates *v.* Pennsylvania Railroad Company *et al.*

ANTHRACITE AND BITUMINOUS COAL.—Proportionately lower rates for longer hauls. Two roads by agreement carried bituminous coal from the Snow Shoe region in Pennsylvania to Perth Amboy, N. J., a distance of about 300 miles, at a higher aggregate, but lower proportionate, rate than was charged by one road on anthracite for the distance over its line, the distance over such line being about 150 miles. *Held*, that this was no undue preference in favor of the bituminous coal traffic, and subjected anthracite traffic to no unreasonable disadvantage, except as the anthracite charges might be excessive.

Coxe Brothers & Co. *v.* Lehigh Valley Railroad Company.

GROUP RATES.—It is often impracticable to establish different rates on the same commodity from practically the same locality to the same market, and the owners of mines in the Lehigh anthracite region are subjected to no unreasonable disadvantage from the present grouping of mines based on more than actual distance when shipping east and less than actual distance when shipping west. (*Ib.*)

COMPETITIVE COMMODITIES; LOCALITIES.—The provision of the third section of the act to regulate commerce prohibiting carriers from making or giving any undue or unreasonable preference or advantage to any particular person, firm, company, corporation or locality, or any particular description of traffic, in any respect whatsoever, not only applies to relative rates on one description of traffic shipped to or from competing localities, but also to relative rates on differently described articles which are competitive in the same markets; and when carriers have established rates on articles of competitive traffic which are relatively

COMPETITIVE COMMODITIES; LOCALITIES.—Continued.

reasonable and fair, they can not arbitrarily select particular articles of such traffic and materially raise or lower rates so established thereon without violating that provision of the statute.

Squire & Co. v. Michigan Central Railroad Company et al.

BY PAYMENT OF REBATES THROUGH EXCESSIVE CAR MILEAGE AND YARDAGE CHARGES.—A firm of cattle dealers in the city of New York, who procured their cattle on a large scale from Chicago and other western points for domestic consumption as well as for export, make an arrangement with two interstate rail carriers constituting a through line from Chicago to New York that the said firm will, under the name of an express company of their own creation, furnish not less than 200 or more than 400 improved live-stock cars for the transportation of these cattle. For the rental of these improved stock cars the carriers pay this express company three-quarters of a cent per mile, whether loaded or empty. Extraordinary facilities and rights of way are given these cars to enable them to make a large mileage, and they make more than twice the mileage of ordinary stock cars. Besides this, the carriers pay 50 cents for the loading of each of said cars with cattle at the Union Stock Yards in Chicago, for which no charge is made against the express company or the firm represented by it. In addition to this, the carriers pay this firm yardage at the rate of $3\frac{1}{2}$ cents per hundred pounds on all their cattle, and upon all other cattle hauled for other firms in the care of this firm, owning the express company, to its yards at pier 45 East River. This yardage charge is thus paid to the said firm by the said carriers for keeping their cattle in the firm's own yards after delivery of them to the firm, and then this yardage charge is deducted from the tariff rate charged by the carrier. The amount of these rebates to this firm in rates on these cattle by these carriers more than pays the entire cost of the improved stock cars within two years after operations are commenced with them, including the expenses of operation, leaving said firm owning the cars and still operating them with all these advantages and rates and facilities. *Held*, (1) This is an unlawful preference to the firm owning these improved stock cars and a violation of the act to regulate commerce. (2) It is an unlawful and unjust prejudice to other cattle firms and dealers in New York who are competitors in the business of said firm owning said improved stock cars.

Shamberg v. Delaware, Lackawanna and Western Railroad Company et al.

SAME RATE FOR LONGER AND SHORTER DISTANCES.—The "blanket rate," as it is called, by which the same rate is charged by the all-rail lines from the city of New York, and from all points in the oil-producing regions in the States of Pennsylvania, Ohio, and West Virginia, and from all the territory in the United States east of the ninety-seventh meridian of longitude, in the carriage of petroleum and products to San Francisco, Oakland, Sacramento, Stockton, Marysville, San José, Los Angeles, and San Diego, in the State of California, is a rate that has its origin in and is based upon actual competition for the carriage of this large traffic, on the one side, by the all-rail lines, and on the other side, by the lines part rail and part water, and also, in some instances, all-water lines, and also in other instances, part pipe lines and part water lines; and it is a rate of which petitioner has no right to complain as being a violation of the fourth section of the act to regulate commerce, because it does not appear from the evidence that it is a violation of that section.

SAME RATE FOR LONGER AND SHORTER DISTANCES.—Continued.

Rice *v.* Atchison, Topeka and Santa Fé Railroad Company *et al.*
Ordinarily longer distances warrant higher charges, but carriers may lawfully accept the same aggregate, though less profitable, rates for longer distances, provided such carriers do not "subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage."

James & Mayer Buggy Company *v.* Cincinnati, New Orleans and Texas Pacific Railway Company *et al.*

FOREIGN AND DOMESTIC TRAFFIC.—

New York Board of Trade and Transportation *et al. v.* Pennsylvania Railroad Company *et al.*

FOOD PRODUCTS.—

In re Alleged Excessive Freight Rates and Charges on Food Products.

See Reasonable Rates; Relative Rates; Unjust Discrimination; Long and Short Haul Clause.

PREJUDICE AND DISADVANTAGE.

Bates *v.* Pennsylvania Railroad Company *et al.*

Proctor & Gamble *v.* Cincinnati, Hamilton and Dayton Railroad Company *et al.*

See Preference or Advantage.

PRESUMPTION.

FILING OF SCHEDULES RAISES NO PRESUMPTION AS TO THE LEGALITY OF RATES.—

San Bernardino Board of Trade *v.* Atchison, Topeka and Santa Fé Railroad Company *et al.*

PROCEEDING.

REDUCTION OF RATE DURING PENDENCY.—

Bates *v.* Pennsylvania Railroad Company *et al.*

BEFORE COMMISSION.—

In re Alleged Excessive Freight Rates and Charges on Food Products.

McMillan & Co. *v.* Western Classification Committee.

IN UNITED STATES COURTS. (*Ib.*)

INSTITUTED BY MERCANTILE SOCIETY.—

Boston Fruit and Produce Exchange *v.* New York and New England Railroad Company *et al.*

See Complaint; Concession of Relief.

PRODUCERS.

Warner *v.* New York Central and Hudson River Railroad Company.

In re Alleged Excessive Freight Rates and Charges on Food Products.

Delaware State Grange, etc., *v.* New York, Philadelphia and Norfolk Railroad Company *et al.*

See Reasonable Rates.

PROOF.

See Evidence; Burden of Proof.

PUBLIC INTEREST.

- Lehmann, Higginson & Co. *v.* Southern Pacific Company *et al.*
In re Alleged Excessive Freight Rates and Charges on Food Products.
 Manufacturers' and Jobbers' Union of Mankato *v.* Minneapolis and St. Louis Railway Company *et al.*
 Rice, Robinson & Witherop *v.* Western New York and Pennsylvania Railroad Company.
 Board of Trade of the City of Chicago *v.* Chicago and Alton Railroad Company *et al.*
 McMillan & Co. *v.* Western Classification Committee.
 Kauffman Milling Company *v.* Missouri Pacific Railway Company *et al.*
 Delaware State Grange, etc., *v.* New York, Philadelphia and Norfolk Railroad Company *et al.*
 Shamberg *v.* Delaware, Lackawanna and Western Railroad Company *et al.*
 New York and Northern Railway Company *v.* New York and New England Railroad Company *et al.*

RAILROAD COMPANY.

FINANCIAL OBLIGATIONS.—

In re Alleged Excessive Freight Rates and Charges on Food Products.

ACCOUNTS OF, WHEN ALSO A MINER AND SHIPPER OF COAL.—

Haddock *v.* Delaware, Lackawanna and Western Railroad Company.

OWNER OF CAPITAL STOCK OF COAL COMPANY.—

Coxe Brothers & Co. *v.* Lehigh Valley Railroad Company.

SOLVENCY.

New York and Northern Railway Company *v.* New York and New England Railroad Company *et al.*
See Carriers; Reasonable Rates.

RAILROAD REGULATION.

IN THE STATES.—

Report of Interstate Commerce Commission.

IN FOREIGN COUNTRIES.—

Report of Interstate Commerce Commission.
See Interstate Commerce; Interstate Commerce Commission.

RAILROADS.

CONSOLIDATION OF.—

Third Annual Report of Interstate Commerce Commission,

IN FOREIGN COUNTRIES. (*Ib.*)

GRANT OF TRACKAGE RIGHTS FOR THROUGH BUSINESS.—

Alford *v.* Chicago, Rock Island and Pacific Railway Company.

NOT A COMMON HIGHWAY.—The tracks of a railroad are not a common highway upon which any one can enter and use his own cars for transportation purposes against the objection of the company owning the tracks.

Worcester Excursion Car Company *v.* Pennsylvania Railroad Company.

See Preference and Advantage; Carriers; Cars; Contracts; Agreements.

CHARACTER OF, WHEN CONSIDERED.—

Lehmann, Higginson & Co. *v.* Southern Pacific Company *et al.*

CONSOLIDATION OF COMPETING.—

Rice, Robinson & Witherop *v.* Western New York and Pennsylvania Railroad Company.

Report of Interstate Commerce Commission.

See Carriers.

RATE MAKING.

COMBINATION RATES NOT SHOWN ON TARIFFS.—The theory of a combination rate made up of a through rate to some point and the local back to another point on the same line, without showing the straight rate on the schedules, although popular with carriers, is an anomaly in rate making. A straight rate to every point on a line and duly shown on the tariff sheets, is undoubtedly the only correct method.

Lehmann, Higginson & Co. *v.* Southern Pacific Company *et al.*

See Rates; Tariffs.

RATES.

GROUP.—

First Annual Report of Interstate Commerce Commission.

Business Men's Association of the State of Minnesota *v.* Chicago, St. Paul, Minneapolis and Omaha Railway Company.

Howell *et al.* *v.* New York, Lake Erie and Western Railroad Company *et al.*

Imperial Coal Company *et al.* *v.* Pittsburgh and Lake Erie Railroad Company *et al.*

Rend *v.* Chicago and Northwestern Railway Company.

Third Annual Report of Interstate Commerce Commission.

Stone & Carten *v.* Detroit, Grand Haven and Milwaukee Railway Company.

Kauffman Milling Company *v.* Missouri Pacific Railway Company *et al.*

DISPARITY IN.—

First Annual Report of Interstate Commerce Commission.

UNSTEADINESS IN. (*Ib.*)WARS OF. (*Ib.*)

INFORMATION CONCERNING.—Duty of carriers in respect to furnishing precise information to the public concerning all matters affecting rates and charges in transportation, stated.

Rice *v.* Louisville and Nashville Railroad Company,

COMBINATION.—

Martin *v.* Southern Pacific Company,

In re Passenger Tariffs.

SINGLE.—

Martin *et al.* v. Chicago, Burlington and Quincy Railroad Company *et al.*

LOCAL AND THROUGH, CONSIDERED. (*Ib.*)

Business Men's Association of the State of Minnesota v. Chicago, St. Paul, Minneapolis and Omaha Railway Company.

Business Men's Association of the State of Minnesota v. Chicago and North-Western Railway Company.

MUST BE EQUAL AND OPEN.—

In re Tariffs of Transcontinental Lines.

PASSENGER.—

In re Passenger Tariffs and Rate Wars.

Third Annual Report of Interstate Commerce Commission.

THROUGH, DEFINED.—

Chamber of Commerce of the City of Milwaukee v. Flint and Pere Marquette Railroad Company *et al.*

MILLING IN TRANSIT. (*Ib.*)

SPECIAL, PRIOR TO THE ACT.—

Myers, survivor, v. Pennsylvania Company *et al.*

EXPORT.—

New York Produce Exchange v. New York Central and Hudson River Railroad Company *et al.*

Third Annual Report of Interstate Commerce Commission.

ON DOMESTIC AND EXPORT SHIPMENTS. (*Ib.*)THROUGH EXPORT, INLAND PROPORTION OF. (*Ib.*)

LOCAL.—Previous payment of, to point of shipment does not justify exception to fourth section.

James & Abbott v. East Tennessee, Virginia and Georgia Railway Company *et al.*

MILEAGE. (*Ib.*)

McMorran *et al.* v. Grand Trunk Railway Company of Canada *et al.*

Third Annual Report of Interstate Commerce Commission.

New Orleans Cotton Exchange v. Illinois Central Railroad Company *et al.*

New Orleans Cotton Exchange v. Cincinnati, New Orleans and Texas Pacific Railway Company *et al.*

Chicago, Rock Island and Pacific Railway Company v. Chicago and Alton Railroad Company.

Poughkeepsie Iron Company v. New York Central and Hudson River Railroad Company *et al.*

ON LIVE CATTLE IN CAR LOADS.—

Leonard v. Chicago and Alton Railroad Company.

Chappell v. Chicago and Alton Railroad Company.

ON CARLOAD AND LESS THAN CARLOAD SHIPMENTS.—

Thurber *et al.* v. New York Central and Hudson River Railroad Company *et al.*

Leggett & Co. v. New York Central and Hudson River Railroad Company *et al.*

Greene v. New York Central and Hudson River Railroad Company *et al.*

WHEN CHANGES ARE NOT JUSTIFIABLE.—

Bates v. Pennsylvania Railroad Company *et al.*

COMBINATION, WHEN UNLAWFUL.—When combination rates are made which are different from the rates specified in the tariffs as published and filed, or when made by the employment of two or more classifications upon the same shipment, they are in contravention of the statute.

In the matter of the Tariffs and Classifications of the Atlanta and West Point Railroad Company *et al.*

MUST BE SHOWN ON PUBLISHED TARIFFS. (*Ib.*)

NOTICE OF ADVANCES AND REDUCTIONS.—

In re Acts and Doings of Grand Trunk Railway Company of Canada.

Third Annual Report of Interstate Commerce Commission.

Under the amendments of March 2, 1889, to the statute requiring ten days' previous notice of advances and three days' previous notice of reductions in rates, they can not be varied from day to day, or oftener, to meet fluctuations in ocean rates.

New York Produce Exchange *v.* New York Central and Hudson River Railroad Company *et al.*

HOW DEMORALIZED BY WATER COMPETITION.—

Third Annual Report of the Interstate Commerce Commission.

EFFECT OF STATE ON INTERSTATE RATES. (*Ib.*)

PASSENGER EXCURSION.—Passenger excursion rates are required to be published according to the provisions of section 6 of the act to regulate commerce.

In re Passenger Tariffs.

Pittsburg, Cincinnati and St. Louis Railway Company *v.* Baltimore and Ohio Railroad Company.

TO PARTIES.—When party rates are lower than contemporaneous rates for single passengers they constitute discrimination and are illegal. (*Ib.*)

THROUGH AND LOCAL.—Through rates are not required to be made on a mileage basis, nor local rates to correspond with the divisions of a joint through rate over the same line.

McMorran *et al.* *v.* Grand Trunk Railway Company of Canada *et al.*
Farrar & Co. *v.* East Tennessee, Virginia and Georgia Railway Company.

Crews *et al.* *v.* Richmond and Danville Railroad Company.

Martin *et al.* *v.* Chicago, Burlington and Quincy Railroad Company.

New Orleans Cotton Exchange *v.* Cincinnati, New Orleans and Texas Pacific Railway Company.

Detroit Board of Trade *v.* Grand Trunk Railway Company *et al.*
Lippmann & Co. *v.* Illinois Central Railroad Company.

Third Annual Report of Interstate Commerce Commission.

New Orleans Cotton Exchange *v.* Illinois Central Railroad Company *et al.*

New Orleans Cotton Exchange *v.* Cincinnati, New Orleans and Texas Pacific Railway Company *et al.*

Poughkeepsie Iron Company *v.* The New York Central and Hudson River Railroad Company *et al.*

Chicago, Rock Island and Pacific Railway Company *v.* Chicago and Alton Railroad Company.

ADDITIONAL TRAIN.—It was a regulation of the respondent company, published on its public tariff schedules, that the conductors should collect fare on trains from passengers without tickets by adding 25 cents to single-trip

ADDITIONAL TRAIN.—Continued.

rates. *Held*, That it was not unjust discrimination against the complainant to exact this addition from him.

Sidman v. Richmond and Danville Railroad Company.

WHEN UNLAWFUL REBATES ARE GIVEN BY FREE CARTAGE.—

Stone & Carten v. Detroit, Grand Haven and Milwaukee Railway Company.

THROUGH, BY WATER AND RAIL LINES.

In the Matter of the Application of F. W. Clark.

See Carriers; Preference and Advantage; Reasonable Rates; Relative Rates; Tariffs; Traffic; Unjust Discrimination; Concession of Relief; Joint Rates; Long and Short Haul Clause.

COMBINATION.—

Lehmann, Higginson & Co. v. Southern Pacific Company et al.

Hamilton & Brown v. Chattanooga, Rome and Columbus Railroad Company et al.

James & Mayer Buggy Company v. Cincinnati, New Orleans and Texas Pacific Railway Company et al.

STRAIGHT. (*Ib.*)

SUGAR.—

Lehmann, Higginson & Co. v. Southern Pacific Company et al.

PATENT MEDICINES.—

Warner v. New York Central and Hudson River Railroad Company et al.

SOAP.—

Andrews Soap Company v. Pittsburg, Cincinnati and St. Louis Railway Company et al.

Proctor & Gamble v. Cincinnati, Hamilton and Dayton Railroad Company et al.

Beaver & Co. v. Pittsburg, Cincinnati and St. Louis Railway Company et al.

FOOD PRODUCTS.—

In re Alleged Excessive Freight Rates and Charges on Food Products.

PETROLEUM AND ITS PRODUCTS.—

Rice, Robinson & Witherop v. Western New York and Pennsylvania Railroad Company.

Rice v. Atchison, Topeka and Santa Fé Railroad Company et al.

BLANKET.—

Rice v. Atkinson, Topeka and Santa Fé Railroad Company et al.

HOGS AND HOG PRODUCT.—

Board of Trade of the City of Chicago v. Chicago and Alton Railroad Company et al.

Squire & Co. v. Michigan Central Railroad Company et al.

PIG IRON.—

Poughkeepsie Iron Company v. New York Central and Hudson River Railroad et al.

SURGICAL CHAIRS.—

Harvard Company v. Pennsylvania Company et al.

COAL.—

Haddock v. Delaware, Lackawanna and Western Railroad Company.

Coxe Brothers & Co. v. Lehigh Valley Railroad Company.

GROUP —

Coxe Brothers & Co. *v.* Lehigh Valley Railroad Company.

WHEAT AND FLOUR.—

Kauffman Milling Company *v.* Missouri Pacific Railroad Company *et al.*

IMPORT TRAFFIC.—

New York Board of Trade and Transportation *et al.* *v.* Pennsylvania Railroad Company *et al.*

CATTLE AND DRESSED BEEF.—

Squire & Co. *v.* Michigan Central Railroad Company *et al.*

PEACHES.—

Delaware State Grange, etc. *v.* New York, Philadelphia and Norfolk Railroad Company *et al.*

Boston Fruit and Produce Exchange *v.* New York and New England Railroad Company *et al.*

PERISHABLE FREIGHT. (*Ib.*)

COTTON.—

New Orleans Cotton Exchange *v.* Louisville, New Orleans and Texas Railway Company.

VEHICLES.—

James & Mayer Buggy Company *v.* Cincinnati, New Orleans and Texas Pacific Railway Company *et al.*

RATE WARS AND RATE CUTTING.—

Report of Interstate Commerce Commission.

See Through Rates; Local Rates; Through and Local Rates; Re-hearing; Through Routes and Through Rates; Unjust Discrimination; Reasonable Rates; Preference or Advantage; Relative Rates; Mileage Rates; Carriers; Tariffs; Traffic.

RATE SHEETS.

See Tariffs.

RATES UNREASONABLY LOW.

COMMISSION WILL NOT PROHIBIT.—The first section of the act does not render rates that are unreasonably low illegal in a sense that will authorize the Commission to prohibit their being made.

In re Chicago, St. Paul and Kansas City Railway Company.

The Commission has no power to order rates increased upon the ground that they are so low that persistence in making them would be ruinous. (*Ib.*)

CONSIDERED AND DISCUSSED.—

Second Annual Report of Interstate Commerce Commission.

RATE WARS.—A passenger-rate war in which rates were repeatedly reduced by several competing lines to an exceedingly low basis on a particular class of traffic, without any filing of tariffs, was contrary to the requirements of law, as well as against the true interest of each party thereto.

In re Passenger Tariffs and Rate Wars.

No necessity or compulsion is created by war of rates which justifies disobedience of the statutes. (*Ib.*)

See Unjust Discrimination.

REASONABLE RATES.

SUBJECT CONSIDERED.—

First Annual Report of the Interstate Commerce Commission.

EVIDENCE.—Rates will not be declared unreasonable and unlawful under the first section of the act without other testimony than that afforded by comparison.

Raymond *v.* Chicago, Milwaukee, and St. Paul Railway Company.

CONSIDERATIONS WHICH AFFECT QUESTION.—In determining what is a just and reasonable rate for a particular commodity (for example, wheat), the Commission will take into consideration the earnings and expenses of operating, rates charged upon the same commodity upon other roads as nearly similarly situated as may be, the diversities between the railroad in question and such other roads, the relative amount of through and local business, the proportion borne by the commodity in question to the remainder of the local traffic, the market value of the commodity and its gradual reduction, the reductions made by the carrier upon other articles which are consumed and necessarily required by the producers of the article in question, and all other circumstances affecting the traffic of itself and as related to other considerations entering into the charges of the carrier.

Evans *v.* Oregon Railway and Navigation Company.

Reed *v.* Oregon Railway and Navigation Company.

While a complainant has no interest in the division the defendants make between themselves, and it does not determine what the charge to the public must be, yet the division is not without significance in determining what are reasonable rates for the whole distance on the lines in question.

Carriers making an advance in rates should be able to present a satisfactory justification of such advance, particularly when the old rates have been of many years' standing and the advance is great and the traffic affected is of large and constantly increasing volume and of vital importance to a large section of country.

Railroad Commission of Florida *v.* Savannah, Florida and Western Railway Company *et al.*

PRINCIPLES RELATING TO.—When the reasonableness of rates is in question the charges made on long through lines can not, for reasons stated in the opinion, form a just basis for comparison with local rates for relatively shorter distances.

Crews *v.* Richmond and Danville Railroad Company.

La Crosse Manufacturers' and Jobbers' Union *v.* Chicago, Milwaukee and St. Paul Railway Company.

A carrier is not compellable by law to give the merchants of a town on its line the privilege of shipping their goods from the point of purchase to their own locality, and again from thence to the place at which the goods may be sold by them, at the same rate which would have been charged had there been but one shipment from the point of purchase to the point of ultimate delivery. (*Ib.*)

Principle, that the ratio of rates should decrease with the increase of distance conceded, but modifying conditions often exist; some of them stated; as applied to the facts in this case no change in rates required.

Lincoln Board of Trade *v.* Burlington and Missouri Railroad Company in Nebraska.

The rate of compensation which railroad companies may lawfully receive

PRINCIPLES RELATING TO.—Continued.

for transportation services can not be so limited that the shipper may in all cases realize actual cost of production.

In re Alleged Excessive Freight Rates and Charges on Food Products.

Charges for transportation service should have reasonable relation to cost of production and to the value of the service to the producer and shipper, but should not be so low on any as to impose a burden on other traffic. (*Ib.*)

In the carriage of great staples, which supply an enormous business, and which in market value and actual cost of transportation are among the cheapest articles of commerce, rates yielding only moderate profit to the carrier, are both necessary and justifiable, and where the carriers frequently put in force and continue for considerable periods of time tariffs of rates and charges, it is a fair inference that such rates and charges are profitable. (*Ib.*)

TO SMALL AND LARGE TOWNS.—A distributing center, however great or important, can not demand as a matter of right that the rates from a common source of supply to more distant and smaller towns shall be made up of the sum of the rate to itself, and the rate thence to such smaller towns; but the carriers may make rates from the common source of supply to the smaller towns directly as single rates; and if the single rate is less than the sum of the two which are made to and from the distributing center, it is not for that reason necessarily objectionable.

Martin et al. v. Chicago, Burlington and Quincy Railroad Company et al.

RESPONSIBILITY OF CARRIERS OWNING THROUGH LINES.—When railroad companies make a through and continuous line and offer it for the use of the public, they can not rid themselves of responsibility for unjust charges by breaking the whole in two and calling themselves carriers from the severed end of their through lines.

Parkhurst & Co. v. Pennsylvania Railroad Company et al.

Nicolai v. Pennsylvania Railroad Company.

The Pennsylvania Railroad Company operates a part of a through line which it joins in making, and owns a controlling interest in the capital stock of the Pittsburgh, Cincinnati and St. Louis Railway Company, by which the other part is operated. *Held*, That the Pennsylvania Railroad Company can not free itself from the responsibility of excessive through rates by getting behind the corporate existence of the other company as a separate carrier. (*Ib.*)

PROPORTIONS OF THROUGH RATES.—The apportionment of rates to different parts of a through line do not determine the charge to the public, but may be significant on the question of reasonable rates for the whole distance. (*Ib.*)

Distance by shortest route is properly to be considered in determining the propriety of rates by a longer competing line.

Lincoln Board of Trade v. Missouri Pacific Railway Company.

One feature of the transportation of freight by railroads in long hauls on joint rates, or what is usually called through rates, unless there be exceptional conditions which modify the rule, is that the rate per ton per mile grows less in the proportion to the greater distance, while the aggregate of the rate increases in proportion to such greater distance; but this is not found to exist in the case of the local rates of a railroad where the stations are occasionally grouped, but more usually graded accord-

PROPORTIONS OF THROUGH RATES.—Continued.

ing to distance, except as an incident of rare and highly exceptional conditions of the transportation service.

Business Men's Association of the State of Minnesota *v.* The Chicago, St. Paul, Minneapolis and Omaha Railway Company.

The method of testing the freight rates of a railroad by the rate per ton per mile does not take into consideration the surrounding circumstances and conditions that enter into the making of the rate, and for this reason it can not be considered a controlling rule in determining the reasonableness of rates. (*Ib.*)

In determining the reasonableness of any freight rate all the surrounding circumstances and conditions must be considered as well as the rights of the shippers. (*Ib.*)

COMPARISON WITH EXCEPTIONAL RATES ON OTHER PORTIONS OF THE LINE.—

Exceptional rates caused by competition and not illegal under the act to regulate commerce can not be adopted as a standard by which to measure other rates on the same line where the exceptional conditions do not exist. (*Ib.*)

Business Men's Association of the State of Minnesota *v.* Chicago and Northwestern Railway Company.

COMPARISON WITH RATES OF OTHER CARRIERS.—Comparison of rates charged by railroad companies under circumstances and conditions substantially dissimilar proves nothing and can not be adopted as standard in arriving at the reasonableness and justness of rates. (*Ib.*)

RAILROAD MATERIAL.—Rates established by a common carrier in order to keep upon its line material for which the road has use, or to keep the price low for its own advantage, can not be justified.

Reynolds *v.* Western New York and Pennsylvania Railroad Company.

NOT NECESSARILY PROPORTIONATE TO DISTANCE.—As a rule in the transportation of freight by railroads while the aggregate charge is continually increasing the further the freight is carried the rate per ton per mile is constantly growing less.

Farrar & Co. *v.* East Tennessee, Virginia and Georgia Railway Company.

In the nature of things joint rates on long hauls usually are and as a rule should be lower in proportion to distance than local rates on short hauls if on the same commodity. (*Ib.*)

The act to regulate commerce throws no restrictions or obstacles in the way of the operation of this rule, but gives it the benefit and aid of its sanction and safeguard. (*Ib.*)

Joint rates on lumber from Dalton to Roanoke and Lynchburg shown to be unreasonable upon the grounds and for the reasons set forth in the opinion. (*Ib.*)

Certain local rates held not unreasonable. (*Ib.*)

On freight hauled through the cities of Detroit and Chicago to and from the Northwestern States and Territories and the seaboard or New England points, the rule invoked by the petitioners that an estimated portion of the through rate as between the points of origin of the freight and Detroit must not be lower in proportion to distance than the rate upon the freight from such points of origin destined to Detroit is one that can not be sustained.

Detroit Board of Trade *et al.* *v.* Grand Trunk Railway of Canada *et al.*

NOT NECESSARILY PROPORTIONATE TO DISTANCE.—Continued.

Upon complaint of alleged unreasonableness of a rate on grain and grain products from Port Huron to Buffalo, as compared with a through rate from Chicago to Buffalo: *Held*, That though the local rate from Port Huron to Buffalo might be regarded as disproportionate on basis of distance alone, other considerations are involved, but no good reasons having been shown for a higher rate upon grain products than upon grain, that portion of the complaint is consistent and the products ordered to be carried at the same rate as grain.

McMorran et al. v. Grand Trunk Railway Company of Canada.

It is not unlawful to charge a less sum in the aggregate on business passing through distributing points to local points beyond than when like commodities are purchased by merchants at such distributing points and by them reforwarded.

In re Tariffs and Classifications of the Atlanta and West Point Railroad Company et al.

Through rates are not required to be made on a mileage basis, nor local rates to correspond with the division of a joint through rate over the same line, mileage is usually an element of importance, and due regard to distance proportions should be observed in connection with the other considerations that are material in fixing transportation charges.

McMorran et al. v. Grand Trunk Railway Company of Canada et al.

Third Annual Report of Interstate Commerce Commission.

The proportion of one carrier in a through rate upon a long haul often is, and frequently well may be, considerably less than its local rate for hauling the same freight over its own line, without there being any unjust discrimination, unlawful preference, or extortion involved in such a method.

New Orleans Cotton Exchange v. Illinois Central Railroad Company et al.

New Orleans Cotton Exchange v. Cincinnati, New Orleans and Texas Pacific Railway Company et al.

The generally recognized principle that cost of carriage is in inverse ratio to distance, and that therefore the charge per ton per mile should diminish with distance, is not a rule required by the statute, and is subject to qualifications and exceptions.

The Manufacturers' and Jobbers' Union of Mankato, Minn., v.

The Minneapolis and St. Louis Railway Company et al.

PROFITABLE RATES MAY NOT BE UNJUST.—Proof that certain rates are very profitable to the road, and that they are higher than the rates charged on certain other somewhat similar commodities, is not of itself a sufficient ground for determining either that such rates are unjust, or what rates would be just and reasonable for the traffic in question.

Howell et al. v. New York, Lake Erie and Western Railroad Company et al.

WHAT SHOULD BE CONSIDERED IN DETERMINING.—A question of reasonable rates can not be properly decided without full knowledge of all the facts concerning the particular traffic in question, and its relations to the other traffic of the carrier; some of the elements stated which are necessary and proper to be considered. (*Ib.*)

GROUP RATES ON MILK.—Grouping of milk rates over large extent of territory not shown to injuriously affect the producers who complain; their prod-

GROUP RATES ON MILK.—Continued.

uct is not reduced in value, nor is any part of it left unsold, while the requirements of consumers demand a steadily increasing area of supply. (*Ib.*)

WHEN RATES ARE PRIMA FACIE JUST AND REASONABLE.—Rates that are just and reasonable from selected manufacturing points, through the entire territory east of the Missouri River and west of the Atlantic seaboard, are *prima facie* just and reasonable from all other points in the same territory.

In re Tariffs of Transcontinental Lines.

SMALL EARNINGS DO NOT JUSTIFY EXCESSIVE.—In determining what are reasonable rates the fact that a road earns a little more than operating expenses is not to be overlooked, but it can not be made to justify grossly excessive rates.

New Orleans Cotton Exchange *v.* Cincinnati, New Orleans and Texas Pacific Railway Company *et al.*

PARTIES.—The reasonableness of rates can not be fairly determined in a proceeding to which some of the parties responsible for such rates are not parties. (*Ib.*)

CIRCUMSTANCES AND CONDITIONS.—In arriving at what is a just and reasonable rate on freight transported by a carrier on a short local line having but a small volume of business, where the cost of transportation is exceptionally great, arising from steep grades, sparse population, and light traffic, these are circumstances and conditions of controlling weight in the making of rates and can not be overlooked when a question of their reasonableness is involved.

Rice, Robinson & Witherop *v.* Western New York and Pennsylvania Railroad Company.

Under the exceptional circumstances requiring through rates, shippers, locally from Chicago, Ohio, and Pennsylvania, of coal can not justly insist upon rates no higher than the division of a through rate from Illinois mines, which appertains to the lines running northwest from that city, the circumstances under which the through rate is made being such that it can not be differently adjusted.

Rend *v.* Chicago and Northwestern Railway Company.

In considering such questions thus presented, the circumstances and conditions surrounding the traffic in the respective services performed in its carriage by the rail carriers may be, and in these proceedings are, found to be substantially dissimilar and wholly unlike.

New Orleans Cotton Exchange *v.* Illinois Central Railroad Company *et al.*

New Orleans Cotton Exchange *v.* Cincinnati, New Orleans and Texas Pacific Railway Company *et al.*

In determining such questions a comparison of rates based upon the doctrine that the rate per ton per mile for each of the different services so performed should be the same is not applicable, citing former decisions of the Commission upon this subject. (*Ib.*)

In solving questions of this character the Commission will look at and consider every fact, circumstance, and condition surrounding the traffic and of the service performed in its transportation, and if the competition of water carriers at any point is such as to be large, active, and of controlling force, the all-rail lines competing for the traffic at the same point may make rates that are reasonable and just in view of such competi-

CIRCUMSTANCES AND CONDITIONS.—Continued.

tion and which will enable them to participate in the carriage of the traffic, and are not obliged to go out of the business and leave it as a monopoly to water carriers. (*Ib.*)

Upon complaint by dealers at Humboldt, Kans., against the respondent lines for unjust discrimination in charging a rate of 65 cents per 100 pounds on sugar transported from San Francisco to Kansas City, and 85 cents per 100 pounds upon the same commodity from San Francisco to Humboldt, more than a hundred miles shorter distance, but not on the through line: *Held*, That the reduced rate to Kansas City being forced upon the carriers by competitive conditions beyond their control, and the rate to Humboldt not being unreasonable in itself, but lower than it would be except for the influence of the competitive conditions at Kansas City, and it not appearing that substantial injustice results from the higher rate at Humboldt, the lower rate to Kansas City and the higher rate to Humboldt are not deemed to be in contravention of the statute.

Lehmann, Higginson & Co. v. The Southern Pacific Company et al.

ON LONG HAULS.—Where a rate is in itself a through rate and made up of percentages to an intermediate point on a long haul, the circumstances and conditions of transportation must be rarely exceptional indeed to be of such controlling force as to warrant any considerable excess of such a rate in amount over a percentage of a through rate for an equal distance along the same line by way of the same point to a more distant point.

Chamber of Commerce of the City of Milwaukee v. Flint and Père Marquette Railroad Company et al.

FORMER PREFERENTIAL RATES NOT A FAIR TEST.—A former special and preferred rate is not a fair test of the reasonableness of a present rate.

Myers, survivor, v. Pennsylvania Company et al.

LOCAL AND THROUGH BUSINESS.—A railroad company is under special obligation to give reasonable rates for its local business, but there are many influences which may affect through rates while not bearing upon local rates at all, or if at all in a less degree.

Lippman & Co. v. Illinois Central Railroad Company.

The all-rail line is composed of two separate and distinct lines of railroad, owned by two separate and distinct corporations, but by an arrangement these two corporations make joint through rates on all business from and to New York and Boston passing over their lines, and for this business they furnish fast freight trains which stop at no stations between New York and Boston and have the right of way over all other freight trains; as to all other points along their lines, however, they charge their local rates, and this business is done by way-freight trains of each company respectively for itself and on its own account; all of which methods and rates in each instance are duly advertised in their published tariffs.

W. S. King & Company v. the New York, New Haven and Hartford Railroad Company and New York and New England Railroad Company.

According to the evidence the cost of service is far less expensive to the carrier in doing the through business than in doing separately, each for itself, the combined local business of the two railroad companies. It does not appear that the through rate to Boston is unreasonably low; nor does it appear upon the evidence in this proceeding that the local rates of these two railroad companies are unjust and unreasonable. (*Ib.*)

RATES AT OTHER POINTS WILL BE CONSIDERED.—In determining the reasonableness of rates at one point which are the same at other points not far distant on the same system of railroads, the Commission will consider the bearings and relative equality of rates at all of the points so situated

In re Petition of the Produce Exchange of Toledo.

ON DIFFERENT BRANCHES.—Two of the south branch lines of the Chicago and Northwestern Railway Company are crossed by the main line of the Chicago, Milwaukee and St. Paul Railway Company. From points on these branch lines the Northwestern Company comes in competition with the St. Paul Company from its main-line points. *Held*, That the charges on these branches do not establish a standard of reasonable rates for like distances from points on a north branch of the same company, where no such competition exists.

Logan et al. v. Chicago and Northwestern Railway Company.

LIVE CATTLE IN CAR LOADS.—A practice had existed on the part of certain carriers of live cattle to make a carload rate irrespective of weight, leaving the shipper to load into the cars as many cattle as he pleased and was able to put into them. The carriers substituted for this practice the rule that while naming a car-lot rate they prescribed a minimum rate, then charged by the hundred pounds in proportion to the car-lot rate for any excess over the minimum. *Held*, That this rule was not unlawful.

Leonard & Chappell v. Chicago and Alton Railway Company.

Prima facie the new rule is more just and reasonable than the practice it supplanted, since the charge is more in proportion to the service rendered. (*Ib.*)

DISTANCE AS A MEASURE OF RAILROAD SERVICE.—Distance is not always a controlling element in determining what is a reasonable rate, but there is ordinarily no better measure of railroad service in carrying goods than the distance they are carried. And where the rate of freight charges over one line, on similar freight carried from neighboring territory to the same market, is considerably greater than over other lines for distances as long or longer, such greater rate is held to be excessive, and should be reduced.

James & Abbott v. East Tennessee, Virginia and Georgia Railway Company et al.

Logan et al. v. Chicago and Northwestern Railway Company.

COST OF CARRIAGE—TERMINAL, BRIDGE, AND FERRY EXPENSES.—Upon complaint against the Grand Trunk Railway of Canada, for alleged unreasonableness of a rate of eight cents a hundred pounds on grain and ten cents a hundred pounds on grain products, from Port Huron to Buffalo, as compared with a through rate of fifteen cents a hundred pounds from Chicago to Buffalo over the line formed by that road and the Chicago and Grand Trunk road: *Held*, That though the local rate from Port Huron to Buffalo might be regarded as disproportionate on the basis of distance alone, other considerations are involved, and in view of the terminal and ferry expenses at Port Huron, the Niagara Bridge charges and the Buffalo terminal expenses, all of which are borne by the Grand Trunk Railway of Canada alone upon business originating at Port Huron, the complaint against the eight-cent rate on grain is not sustained; but no good reason having been shown for a higher rate on grain products,

COST OF CARRIAGE—TERMINAL, BRIDGE, AND FERRY EXPENSES.—Continued.
that portion of the complaint is sustained, and the products ordered to be carried at the same rate as grain.

McMorran *et al.* v. Grand Trunk Railway Company of Canada
et al.

PROPERTY BILLED THROUGH BUT RESHIPED AT INTERMEDIATE POINT.—

Chicago, Rock Island and Pacific Railway Company v. Chicago
and Alton Railroad Company.

VALUE OF THE SERVICE TO BE CONSIDERED.—Cost of service is an important element in fixing transportation charges, and entitled to fair consideration, but is not alone controlling nor so applied in practice by carriers, and the value of the service to the property carried is an essential factor to be recognized in connection with other considerations. The public interests are not to be subordinated to those of carriers, and require proper regard for the value of the service in the apportionment of all charges upon traffic,

Thurber *et al.* v. New York Central and Hudson River Railroad
Company *et al.*

Leggett & Co. v. New York Central and Hudson River Railroad
Company *et al.*

Greene v. New York Central and Hudson River Railroad Com-
pany *et al.*

CAR-LOAD AND LESS THAN CAR-LOAD QUANTITIES.—A difference in rates upon car loads and less than car loads of the same merchandise between the same points of carriage so wide as to be destructive to competition between large and small dealers, especially upon articles of general and necessary use, and which, under existing conditions of trade, furnish a large volume of business to carriers, is unjust, and violates the provisions and principles of the act. (*Ib.*)

CAR LOADS—MORE THAN ONE CONSIGNOR OR MORE THAN ONE CONSIGNEE.—A difference in rate for a solid car load of one kind of freight from one consignor to one consignee, and a car-load quantity from the same point of shipment to the same destination consisting of like freight or freight of like character from more than one consignor to one consignee, or from one consignor to more than one consignee, is not justified by the difference in cost of handling. (*Ib.*)

COMMUTATION TICKETS.—A quarterly commutation ticket was purchased thirteen days after the quarter or term specified on the ticket commenced to run. Held, That the complainant was not entitled to recover any portion of the purchase price for the thirteen days less than the full quarter.

Sidman v. Richmond and Danville Railroad Company.

RAILROAD COMPETITION.—When questions involve the reasonableness of rates upon the transportation of cotton from the Southern States by all rail lines to northern and eastern mills and Atlantic ports upon through rates and a long haul, on the one hand, and on the other, the local rates of rail carriers to a near port upon a short haul at which their service terminates, they having no associated line of steamships for a continuous carriage to ultimate destination, but the cotton so carried by them to such near port being chiefly for export, and all such rail lines penetrating the same territory and competing for the same business, running north, south, and east, in opposite directions, such questions can only be disposed of on broad lines and not from narrow considerations.

RAILROAD COMPETITION.—Continued.

New Orleans Cotton Exchange *v.* Illinois Central Railroad Company *et al.*

New Orleans Cotton Exchange *v.* Cincinnati, New Orleans and Texas Pacific Railway Company *et al.*

The active competition of all these rail carriers for the transportation of such freight, thereby giving them the benefit of a participation in it and lowering the rates for the benefit of the producer and consumer and furnishing many outlets to markets, is one of the results contemplated by the act to regulate commerce and which it was intended to promote. (*Ib.*)

TRANSPORTATION OF EMIGRANTS' MOVABLES.—A shipper, to whom as an emigrant, is accorded the rate provided by the special tariff, for example, \$60 on a carload of freight weighing 20,000 pounds from Chicago, Ill., to Hammond, La., a distance of 863 miles, in December, 1888, and in May, 1889, makes return shipment of same freight from Hammond, La., to Chicago, Ill., under the general tariffs of the carrier, there being no other tariffs on north-bound freight between these points, and is charged therefor \$122 per car, complains of an unjust charge: *Held*, That as the carrier in each instance charged only its open published rates, and no evidence is offered to show that the rates in either instance are unjust and unreasonable, and as the general tariffs of the company have long been in use and published and open to the public, and the special tariff has been but recently issued and is open to a certain special class only and is unlawful, that the general tariffs afford a better standard of what are reasonable and just rates than the special tariff, and that the shipper in such case has not been injured in paying less than one-half the amount charged the general public on the first haul and only what was charged the general public on the second haul.

Elvey v. Illinois Central Railroad Company.

The carrier is ordered and notified to cease and desist from further operating the special freight tariff. (*Ib.*)

ERRORS IN FREIGHT BILLING.—Where by reason of an error of the agent in billing the freight an overcharge was made, the initial carrier was directed to refund the amount of the overcharge.

Pankey v. Richmond and Danville Railroad Company et al.

CARRIERS WHO ARE NOT PARTIES.—The Commission has no power and authority in this proceeding to order other carriers not parties to this proceeding to raise their rates on pig iron transported from Youngstown and Cleveland, Ohio, to New England points in order to overcome the difference in the cost of production of pig iron now existing against petitioner; nor would the Commission enter upon the consideration of any such subject in a proceeding to which such carriers were not parties and in which such localities sought to be burdened with higher rates, for example, Youngstown and Cleveland, Ohio, had no opportunity to be heard; and the findings of fact in the present proceeding, which show that the rates already charged petitioner by the defendants are in themselves, as well as relatively, just and reasonable rates, demonstrates that the Commission could not order the defendants to lower these rates from Poughkeepsie to all points on the Boston and Albany road one-half, and to Holyoke nearly one-half, in order to overcome the difference in the cost or production of pig iron now existing against petitioner.

The Poughkeepsie Iron Company v. The New York Central and Hudson River Railroad Company et al.

SCHEDULE OF RATES ON FILE.—The filing of schedules of rates with the Commission as required by statute, raises no presumption as to the legality of such rates, and no omission or failure to challenge or disapprove the schedules of rates so filed can have the effect of making rates lawful which are unreasonable.

The San Bernardino Board of Trade *v.* The Atchison, Topeka and Santa Fé Railroad Company *et al.*

LIVE HOGS AND HOG PRODUCTS.—A business involving the preparation of such a large and leading staple and necessary of life as meat, with all the competition that exists for it in different and competing localities, brought near to each other by the fast rail lines of the country, is too large to be done in a corner, and is a conspicuous instance of a commodity that requires at the hands of carriers rates that are not only reasonable and just in themselves, but relatively reasonable and just in their bearing upon these different localities.

The Board of Trade of the City of Chicago *v.* The Chicago and Alton Railroad Company *et al.*

CARRIERS MAY BE GUIDED BY MANUFACTURER'S DESCRIPTION.—A manufacturer's description of an article to induce its purchase by the public also describes it for transportation, and carriers may accept his description for purposes of classification and rates. Carriers are not required to analyze freight to ascertain whether it is in fact inferior to the description or public representations under which it is sold, in order to give it a lower rate corresponding to its actual value.

The Andrews Soap Company *v.* The Pittsburg, Cincinnati and St. Louis Railway Company *et al.*

QUANTITY.—The mere fact that one article is of more general use and therefore shipped in greater quantities than another, when each as a rule is shipped in less than carload quantities, and of no considerable difference in bulk, weight, and value, and of no appreciable difference in expense of handling and of haul, constitutes in itself no reason why the first should receive a lower rate than the last. In such a case mere quantity, not measured by any recognized unit of quantity adapted to carriage, and lessening the expense of handling and carriage, can not be allowed to affect rates in the transportation of property.

The Harvard Company *v.* The Pennsylvania Company *et al.*

Surgical chairs compared with other freight and reasons stated as to what the rates on them should be as articles of commerce in course of transportation. (*Ib.*)

TO SMALL TOWN.—When a reduced rate is made at the terminus of a through route under the compulsion of competition, a town not on the through route but reached over a connecting road has a disadvantage of location entailing some additional expense, and a reasonably higher rate to such town than the forced competitive rate is not unlawful.

Lehmann, Higginson & Co. *v.* Southern Pacific Company *et al.*

PATENT MEDICINES.—Patent medicines manufactured and shipped by the complainant are rated in the Official Classification as first class for less than carloads and third class for carloads. Ale, beer, and mineral water are rated as third class in less than carloads and fifth class in carloads. The market value of the medicines is three times or more higher than that of the other articles named and the quantity transported much less. Upon complaint made that the patent medicines should be classified the same as ale, beer, and mineral water. *Held*, That in view of the much

PATENT MEDICINES.—Continued.

higher market value of the medicines and the smaller volume of traffic they supply a higher classification than for the other articles named, in which there is much greater competition among shippers, is not unreasonable, and the classification at present in force is not shown to be unjust.

Warner *v.* New York Central and Hudson River Railroad Company *et al.*

SOAP.—On complaint of unjust classification of soap advertised and sold as toilet soap, but claimed not superior to certain laundry soaps transported at a lower rate. *Held*, That the manufacturers' description of the soap to the public warrants its classification accordingly.

Andrews Soap Company *v.* Pittsburg, Cincinnati and St. Louis Railway Company *et al.*

The complainants are large manufacturers of common soap at Cincinnati, Ohio. In the Official Classification common soap stands in the fifth class in carload lots. The defendant railroad companies have always given it the rate of fifth-class articles, but for many years prior to May, 1889, they charged the complainants for only net weight, the gross weight being one-sixth more than the net weight, but since said date they have charged for gross weight without diminishing the rate per 100 pounds. The effect of this was to charge one-sixth more for the same service than had before been charged. The charge for transportation under the net-weight practice was reasonable and just, and without complaint on the part of shippers or carriers. *Held*, That the increased charge by the device of charging for the gross weight, being one-sixth advance for the same service, was unwarranted, as it operated to make the rate unreasonable.

Proctor & Gamble *v.* Cincinnati, Hamilton and Dayton Railroad Company *et al.*

MUST NOT BE SO LOW AS TO IMPOSE A BURDEN ON OTHER TRAFFIC.—

Lehmann, Higginson & Co. *v.* Southern Pacific Company *et al.*

In re Alleged Excessive Freight Rates and Charges on Food Products.

FOOD PRODUCTS.—Transportation charges now made on corn and oats between the Mississippi River and eastern cities, based on 20 cents per 100 pounds from Chicago, and 23 cents from East St. Louis to New York City, are less than 4.4 mills per ton per mile and are not excessive.

In re Alleged Excessive Freight Rates and Charges on Food Products.

The charge of 20 cents on the 100 pounds of corn and oats from the Missouri River to Chicago, and 5 cents less to the Mississippi River, is excessive, and to be reasonable should not exceed 17 cents to Chicago and 12 to the Mississippi River, east side. (*Ib.*)

The rates on corn and oats in force from stations in Kansas and Nebraska to the Mississippi River, east side, and to Chicago, are 2 cents in excess of reasonable rates. (*Ib.*)

Any transportation charges between the Mississippi River and New York City on wheat and flour based on a higher rate than 23 cents per 100 pounds from Chicago to New York City are unreasonable, and any rate on wheat and flour carried from any one place to another which is more than 15 per cent above the rate on corn and oats between the same places is unreasonable. (*Ib.*)

FOOD PRODUCTS.—Continued.

The rates of 46 cents per 100 pounds on grain and 51 cents on flour and meal between the grain region in Kansas and a large district in Texas are the same for distances shorter than 250 and longer than 800 miles and are unreasonably high for the longer and grossly excessive and extortionate for the shorter distances. (*Ib.*)

CONSIDERATIONS WHICH AFFECT THE QUESTION.—In fixing reasonable rates the requirements of operating expenses, bonded debt, fixed charges, and dividend on capital stock from the total traffic are all to be considered, but the claim that any particular rate is to be measured by these as a fixed standard, below which the rate may not lawfully be reduced, is one rightly subject to some qualifications, one of which is the obligations must be actual and in good faith. (*Ib.*)

The generally recognized principle that cost of carriage is in inverse ratio to distance, and that therefore the charge per ton per mile should diminish with distance, is not a rule required by the statute, and is subject to qualifications and exceptions.

Manufacturers' and Jobbers' Union of Mankato *v.* Minneapolis and St. Louis Railway Company *et al.*

DUTY OF COMMISSION TO ENFORCE PROVISIONS OF ACT CONCERNING.—The act to regulate commerce makes it the duty of the Interstate Commerce Commission to execute and enforce the provisions of the act which require rates and charges to be reasonable. (*Ib.*)

RELATION TO COST OF PRODUCTION AND VALUE OF THE SERVICE.—The rate of compensation which railroad companies may lawfully receive for transportation services can not be so limited that the shipper may in all cases realize actual cost of production.

In re Alleged Excessive Freight Rates and Charges on Food Products.

Charges for transportation service should have reasonable relation to cost of production and to the value of the service to the producer and shipper, but should not be so low on any as to impose a burden on other traffic. (*Ib.*)

But the higher rate for a special service should bear a just relation to the value of the service to the traffic, and is not wholly in the discretion of the carrier. While a carrier should be fully compensated, the public interests require that the traffic should not be rendered valueless to the producer, if the charges of the carrier have such an effect and can be reasonably reduced.

Delaware State Grange, etc. *v.* New York, Philadelphia and Norfolk Railroad Company *et al.*

RATES LONG CONTINUED PRESUMED PROFITABLE.—In the carriage of great staples, which supply an enormous business and which in market value and actual cost of transportation are among the cheapest articles of commerce, rates yielding only moderate profit to the carrier are both necessary and justifiable, and where the carriers frequently put in force and continue for considerable periods of time tariffs of rates and charges, it is a fair inference that such rates and charges are profitable.

In re Alleged Excessive Freight Rates and Charges on Food Products.

A railroad company by putting in force a rate of charges furnishes evidence that the rate is profitable, which is more convincing when such rate is long maintained; and where a carrier put in force and maintained for

RATES LONG CONTINUED PRESUMED PROFITABLE.—Continued.

nearly two years immediately after the act to regulate commerce took effect, a scale of charges largely in excess of that maintained for two years next before the act, and the lower rates were sufficient to meet all the obligations of the road, including income on investment. *Held*, The higher rate should be reduced.

Coxe Brothers & Co. v. Lehigh Valley Railroad Company.

NOT NECESSARILY PROPORTIONATE TO DISTANCE.—The doctrine that an estimated proportion of the through rate must not be less than the local rate from an intermediate point to another point named on the line covered by the through rate, has often been held by the Commission to be untenable.

Poughkeepsie Iron Company v. New York Central and Hudson River Railroad Company *et al.*

Besides terminal expenses and other aggregate charges not dependent upon the distance freight is moved, there are other conditions which justify a lower proportionate charge for longer distances.

Coxe Brothers & Co. v. Lehigh Valley Railroad Company.

PRESUMPTION.—The filing of schedules raises no presumption as to the legality of the rates, and no omission or failure to challenge or disapprove the schedules so filed can have the effect of making rates lawful which are unreasonable.

San Bernardino Board of Trade v. Atchison, Topeka and Santa Fé Railroad Company *et al.*

PIG IRON.—On complaint of unreasonable rates on pig iron from Poughkeepsie, N. Y., to points in Massachusetts, it was held that rates charged to petitioner are the same in substance as rates charged other manufacturers of pig iron at producing furnaces in the State of New York, and are in themselves, as well as relatively, just and reasonable.

Poughkeepsie Iron Company v. New York Central and Hudson River Railroad Company *et al.*

SURGICAL CHAIRS.—Surgical chairs compared with other freight, and reasons stated as to what the rates on them should be as articles of commerce in course of transportation.

Harvard Company v. Pennsylvania Company *et al.*

PETROLEUM AND ITS PRODUCTS.—No question is presented in this case as to whether the rates charged by the all-rail carriers at intermediate points are just and reasonable or not, but, on the contrary, the case was so presented and tried as to distinctly indicate to the Commission that no decision was desired in regard to this matter, for no evidence was offered concerning it by either side; and the case being one that is *inter partes* commenced, prosecuted, and defended by able counsel for the respective parties, the Commission has heard, considered, and determined it as presented by the parties and their counsel.

Rice v. Atchison, Topeka and Santa Fé Railroad Company *et al.*

CHARGE MADE BY ADDING LOCAL RATES.—Flour.

According to the evidence, the cost of serving is far less expensive to the carriers in doing the through business than in doing separately, each for itself, the combined local business of the two railroad companies. It does not appear that the through rate to Boston is unreasonably low; nor does it appear upon the evidence in this proceeding that the local rates of these two railroad companies are unjust and unreasonable.

King & Co. v. New York, New Haven and Hartford Railroad Company *et al.*

CONTRACTS BETWEEN THE PARTIES MADE PRIOR TO THE ACT.—Coal.

That complainant is precluded, by the terms of the contract for shipping coal to Hoboken, from going into evidence to show that the rate on his coal to Hoboken ought to be different from that fixed by the contract; and witnesses and evidence asked for to that end are immaterial.

Haddock v. Delaware, Lackawanna and Western Railroad Company.

The contracts providing that complainant may ship coal to points north and west, on the same terms and rates that respondent for the time being gives other persons, do not preclude complainant from showing that such rates are unjust, oppressive or unreasonable. Complainant is therefore entitled to hearing upon that question. (*Ib.*)

The respondent's motion to dismiss the complaint *in toto* is denied, as good ground of complaint is set forth in respect to northern and western shipments. (*Ib.*)

DISCUSSION OF THE SUBJECT.—

Report of the Interstate Commerce Commission.

FOREIGN AND DOMESTIC TRAFFIC.—

New York Board of Trade and Transportation *et al.* v. Pennsylvania Railroad Company *et al.*

COMMISSION TO DETERMINE.—The act to regulate commerce declares every unreasonable charge unlawful, requires the Commission to enforce its provisions and confers the power, and imposes on the Commission the duty of determining what are reasonable rates as well as what are unreasonable.

Coxe Brothers & Co. v. Lehigh Valley Railroad Company.

REMOVAL OF UNJUST DISCRIMINATION BY CORRECTION OF UNREASONABLE RATES. (*Ib.*)

COMMERCIAL CONSIDERATIONS; RIGHTS OF PRODUCERS.—The requirement of the statute that all rates shall be reasonable and just involves a consideration of the commercial value of the traffic, and implies that rates should be so adjusted that producers of traffic as well as carriers may carry on their pursuits successfully, if practicable for both and without injustice to the carrier. The public good requires what is plainly the spirit of the law, that the transportation interests are not alone to be considered, but that in the just exercise of regulation care should be taken that the lawful and necessary occupations of citizens are not unjustly burdened.

Delaware State Grange, etc., v. New York, Philadelphia and Norfolk Railroad Company *et al.*

PERISHABLE FREIGHT; SPECIAL TRAIN SERVICE AND CAR EQUIPMENT.—The complaint was that the defendants' charges for the transportation of specified perishable articles of truck-farming from stations on their lines of railroad to Jersey City and Philadelphia were excessive and unreasonable, and that the charges were higher for the shorter distances from their stations on the Peninsula in Delaware and Maryland than for the longer distance from Norfolk, Virginia. It was found that the charges on certain articles specified from stations on the Peninsula were excessive, and a reduction was ordered. (*Ib.*)

For a special service by a carrier, such as the transportation of perishable freight, requiring quick movement, prompt delivery at destination, special fitting up of cars, their withdrawal from other service, and their return empty on fast time, all involving greater expense to the carrier,

PERISHABLE FREIGHT, SPECIAL TRAIN SERVICE AND CAR EQUIPMENT.—Continued.

a higher rate than for the carriage of ordinary freight is warranted by the conditions of the service and is reasonable and just. (*Ib.*)

Elements that will be considered in fixing the rates for the transportation of perishable fruit, under special circumstances, discussed and applied to the facts found.

Boston Fruit and Produce Exchange v. New York and New England Railroad Company et al.

The gist of the present complaint is that the rate on peaches from the Delaware district to Boston is unreasonably high and oppressive, and, the fact being so found, a reduction is ordered. (*Ib.*)

PEACHES.—At the hearing of this case upon its merits, the Commission prescribed the freight rate upon peaches, in carload lots, from New Jersey and the Delaware Peninsular to Boston, Mass. One of the defendants filed a motion for rehearing, based upon the claim that some of the other defendants construed the decision of the Commission as justifying them in insisting that the freight charge prescribed should be divided among the carriers on a mileage basis merely: *Held*, That the former decision of the Commission could not be fairly construed as justifying the claim that the single freight charge between the interstate points should be divided on a mileage basis merely; that many of the considerations which induced the fixing of an increased rate for the special service were peculiar to the Pennsylvania Railroad Company, and in which the other carriers east of the Harlem River did not participate; that, under the pleadings and evidence in this case, the Commission could not prescribe a single rate for the service as an entirety to be reasonably and fairly divided among the several carriers by themselves; that the motion for a rehearing be overruled.

Boston Fruit and Produce Exchange v. New York and New England Railroad Company et al.

SUGAR. REPARATION.—2. Several railway companies forming a continuous through line carried certain traffic to the terminal point at a 30-cent rate and for the same rate to an intermediate point, and to a point on a branch line more distant than the said intermediate, but less distant than said terminal point, they maintained a rate of 42 cents on the like traffic: *Held*, That the roads might lawfully maintain the same rate at the intermediate and terminal points, and that some higher rate might be maintained to the branch-line point off the direct through line without unjust discrimination. *Held further*, That as to the branch-line point the complainant was entitled to a refund of the amount paid in excess of a reasonable rate.

Lehmann, Higginson & Co. v. Texas and Pacific Railway Company et al.

WHEAT AND BARLEY.—The rates on wheat and barley, of 50 and 56 cents per hundred weight, respectively, charged by defendant from Ritzville, Wash., to St. Paul, Minn., a distance of 1,576 miles, in view of the circumstances and conditions surrounding the traffic, held not to be unreasonable.

Daniel Buchanan v. Northern Pacific Railroad Company.

ORANGES AND LEMONS. REPARATION.—Upon consideration of all the facts and circumstances in this case: *Held*, That the advance of 10 cents per box in rates on oranges from Florida points to New York and other northeastern markets, made by defendants on November 23, 1890, was

ORANGES AND LEMONS. REPARATION.—Continued.

without justification, and so far as it exceeded 5 cents per box was unreasonable and contrary to law; that defendants be notified and required to make reparation for injuries occasioned by such unreasonable and unlawful rates to the several persons entitled thereto, and, as such persons are not parties to this proceeding and the amounts wrongfully received from them, respectively, can not be ascertained from the evidence already taken, that this proceeding be continued for such further action or inquiry in that behalf as may become necessary.

Railroad Commission of Florida *v.* Savannah, Florida and Western Railway Company *et al.*

See Relative Rates; Preference or Advantage; Unjust Discrimination; Carriers; Classification; Long and Short Haul Clause; Mileage Rates; Through and Local Rates.

REBATES.

ON SHIPMENTS OF COAL.—

In re Acts and Doings of Grand Trunk Railway Company of Canada.

PAID FROM CAR MILEAGE.—

Third Annual Report of Interstate Commerce Commission.

TO HOLDERS OF COMMUTATION TICKETS.—

Sidman v. Richmond and Danville Railroad Company.

UNLAWFULLY CAUSED BY FREE CARTAGE.—

Stone & Carten v. Detroit, Grand Haven and Milwaukee Railroad Company.

See Unjust Discrimination.

FROM RATES ON LIVE CATTLE.—

Shamberg v. Delaware, Lackawanna and Western Railway Company *et al.*

See Preference or Advantage.

REHEARING.

APPLICATION FOR, BY OUTSIDE PARTIES.—

See Practice. Rule XIV, Rules of Practice.

PETITION FOR.—After a case has been decided a petition to open it for further testimony and a rehearing should be verified, and should indicate the nature of the new testimony and its purpose.

Rice, Robinson & Witherop v. Western New York and Pennsylvania Railroad Company.

FORMER ORDER VACATED.—

Bates v. Pennsylvania Railroad Company *et al.*

PETITION.—Must be supported by proof showing *prima facie* at least that there was error in the findings of fact.

Proctor & Gamble v. Cincinnati, Hamilton and Dayton Railroad Company *et al.*

RELATIVE RATES.

UNDER SECTION 1 OF THE ACT.—Rates must be reasonable relatively as well as absolutely.

Boards of Trade Union of Farmington, etc., *v.* Chicago, Milwaukee and St. Paul Railway Company.

ADJUSTMENT OF.—Rates and charges not unreasonably high of themselves can be so adjusted in their relation to each other as to give undue preference.

ADJUSTMENT OF.—Continued.

Raymond v. Chicago, Milwaukee and St. Paul Railway Company.

Whether railroad companies combine or act separately in making rates and charges is not so important; the essential requirement is that however made they shall be reasonable of themselves and so fairly adjusted as to be reasonable in their relations to each other and in their results.

New Orleans Cotton Exchange v. Cincinnati, New Orleans and Texas Pacific Railway Company *et al.*

Through rates admit of very great variety in the forms they assume; and such rates, when reasonably and fairly adjusted in their relations to local business, are greatly favored in the law, because they furnished cheapened rates and greater facilities to the public, while at the same time they give increased employment and earnings to a larger number of carriers.

Chamber of Commerce of the City of Milwaukee v. Flint and Père Marquette Railroad Company *et al.*

The question of relative injustice must be viewed upon broader grounds than a mere balancing of one rate against another. A reduction which will throw into confusion an adjustment of rates over a large section of country, which are not claimed to be unreasonable of themselves, should not be required without a clear right thereto exists under some direct provision of the law.

Rend v. Chicago and Northwestern Railway Company.

Rates can not be arbitrarily charged in the mere discretion of a carrier. They are to be equitably adjusted with regard to the public interests as well as the carrier's. Reduced rates at points where competitive influences are controlling must not fall below some revenue from the traffic in excess of cost, and higher rates at the other points, required for the necessary revenue of a carrier, must be reasonable in themselves, and also relatively reasonable in comparison with the competitive rate.

Lehmann, Higginson & Co. v. The Southern Pacific Company *et al.*

The general rule contemplated by the statute of equitably graduated charges on like traffic with reasonable reference to the amount of the service is just in itself and commonly most beneficial both to the carriers and to the public, and is only to be departed from when justified by exceptional conditions, and in such instances no longer than the conditions require. (*Ib.*)

CIRCUMSTANCES AFFECTING.—The relative reasonableness of rates on shipments from western points to cities on the Atlantic seaboard is to be determined by all the circumstances and conditions that affect the traffic to the respective points between which the rates are questioned, and not solely by one standard of comparison.

Boston Chamber of Commerce v. Lake Shore and Michigan Southern Railway Company.

The length and character of the haul, the cost of service, the volume of business, the conditions of competition, the storage capacity, and the geographical situation at the different terminal points are all elements of importance. (*Ib.*)

In view of the longer haul to Boston than to New York, the greater cost of transportation to Boston, the very much greater volume of business to and from New York, the competition by water transportation and also by several railroad lines, and the geographical and commercial advantages of New York. *Held*, That the existing differentials are not unreasonable. (*Ib.*)

CIRCUMSTANCES AFFECTING.—Continued.

Where relative rates are the same at points not far distant from each other on the same system of railroads, it is the practice of the Commission in determining the reasonableness of rates upon a complaint made at one of these points to consider the bearings and relative equality of rates at all of the points so situated before ordering a change at any one of them, in order to avoid preference to one and prejudice to another.

In re Petition of the Produce Exchange of Toledo.

DUTY CONCERNING.—The spirit and purpose of the act to regulate commerce requires that when the circumstances and conditions will fairly admit of it the charges to all points for a like service should be made relatively equal.

Crews *v.* Richmond and Danville Railroad Company.

La Crosse Manufacturers' and Jobbers' Union *v.* Chicago, Milwaukee and St. Paul Railway Company.

It is not a ground of complaint against a railroad company that it equalizes its rates as between large and small towns, even though the effect may be prejudicial to the large towns, which before had been specially favored. (*Ib.*)

PROOF REQUIRED.—The Commission is not willing to determine the relative reasonableness of rates at many stations, and, in a large extent of territory, upon the mere face of tariffs, and without further proof.

Spartanburg Board of Trade *v.* Richmond and Danville Railroad Company *et al.*

BETWEEN LOCALITIES.—Rates must be relatively fair and reasonable as between localities in essential respects similarly situated.

Detroit Board of Trade *et al. v.* Grand Trunk Railway Company of Canada *et al.*

Where a system of rates is made by a number of carriers, covering a widely extended territory, which seem to be reasonable in themselves and relatively fair so far as the evidence in this case shows, the Commission will not order them to be changed at one important point, thereby rendering other changes unavoidable at a large number of other points, and throwing the rates of the entire system into confusion and unsettling values, unless a case arises in which it is necessary that this should be done in order to enforce compliance with the law and to reach the ends of substantial justice. (*Ib.*)

Equality in charges is required under circumstances and conditions substantially similar, and relative equality is necessary in the degree of similarity. (*Ib.*)

Upon complaint by dealers at Mankato, Minn., that rates from Chicago to Mankato should be no higher than to Waterville, Minneapolis, and points allowed like rates: *Held*, That, in view of the circumstances and conditions existing, a somewhat higher charge to Mankato is not unlawful, but that a difference of 20 per cent or more on the respective classes, charged when the complaint was filed, is excessive, and that a difference of 10 per cent on the several classes is reasonable, and should not be exceeded.

The Manufacturers' and Jobbers' Union of Mankato, Minn., *v.*

The Minneapolis and St. Louis Railway Company *et al.*

When a carrier engages in transportation for which, by reason of competitive conditions or for purposes of its own, it receives low rates from some patrons and at some localities, it accepts the legal obligations to give impartial service to other patrons and at other localities that sustain similar relations to the traffic. (*Ib.*)

BETWEEN LOCALITIES.—Continued.

A business involving the preparation of such a large and leading staple and necessary of life as meat, with all the competition that exists for it in different and competing localities, brought near to each other by the fast rail lines of the country, is too large to be done in a corner, and is a conspicuous instance of a commodity that requires at the hands of carriers rates that are not only reasonable and just in themselves, but relatively reasonable and just in their bearing upon these different localities.

The Board of Trade of the City of Chicago *v.* The Chicago and Alton Railroad Company *et al.*

Pig iron is one of the lowest classes of freight, and the rates on that article complained of in this proceeding are not found to be unjust and unreasonable either in themselves or relatively, as charged petitioner, compared with rates from Youngstown and Cleveland, Ohio.

The Poughkeepsie Iron Company *v.* The New York Central and Hudson River Railroad Company *et al.*

Rates charged petitioner by the defendants on pig iron are in themselves, as well as relatively, the same in substance as rates charged other manufacturers of pig iron at the producing furnaces in the State of New York. (*Ib.*)

ON COMPETING LINES.—Where a change of rates—for example those on the defendant's line in this instance—would involve a reduction of rates on the Dunkirk, Allegheny Valley and Pittsburg and other competing lines not parties to this proceeding, and unsettled relative rates in a large extent of territory, such a change ought not to be made unless based upon adequate grounds.

Rice, Robinson & Witherop *v.* Western New York and Pennsylvania Railroad Company.

ON DIFFERENT BRANCHES.—A departure from the rule of equal mileage rates as applied to the several branches of the road is not conclusive that such rates are unlawful, but the burden is on the company making such departure to show its rates to be reasonable when disputed.

Logan *et al.* *v.* Chicago and North-Western Railway Company.
Report of Interstate Commerce Commission.

IN NEIGHBORING TERRITORY.—Where a freight rate over one line, on similar freight carried from neighboring territory to the same market, is considerably greater than over other lines for distances as long or longer, such greater rate is held to be excessive and should be reduced.

James & Abbott *v.* East Tennessee, Virginia and Georgia Railway Company *et al.*

ON CARLOAD AND LESS THAN CARLOAD QUANTITIES.—

Thurber *et al.* *v.* New York Central and Hudson River Railroad Company *et al.*

Leggett & Co. *v.* New York Central and Hudson River Railroad Company *et al.*

Greene *v.* New York Central and Hudson River Railroad Company *et al.*

FOR LONG AND SHORT HAULS OVER DIFFERENT LINES.—

New Orleans Cotton Exchange *v.* Illinois Central Railroad Company *et al.*

New Orleans Cotton Exchange *v.* Cincinnati, New Orleans and Texas Pacific Railway Company *et al.*

ON COMPRESSED AND UNCOMPRESSED COTTON.—The method of compressing cotton for shipment from the Southern States is one that is found to be absolutely necessary for long through hauls by rail, or where cotton is carried by coastwise steamers or by ocean vessels for export, and the difference in the rate of transportation of compressed and uncompressed cotton by rail-carriers should be the actual and necessary cost of compressing. (*Ib.*)

The Commission by adjustment corrects the rates at Meridian and Jackson, Miss., on compressed and uncompressed cotton carried to New Orleans, and *holds*, that the complaint as to the relative reasonableness of rates at other stations is not sustained. (*Ib.*)

ON DIFFERENT DIVISIONS OF THE SAME CARRIER —The acquisition and consolidation by a rail-carrier under one system of management of different competing lines of road serving the same territory in the carriage of competitive traffic to the same markets, can not create a right on the part of the carrier to take advantage of the consolidation of interests to deprive the public of the benefits of fair competition, nor afford warrant for oppressive discrimination with a view to its own interests, such as equalizing profits from its several divisions, by making rates and charges for one division that gives profitable market to a portion of its patrons, and higher rates and charges for another division that are destructive to the pursuits of other patrons who are competitors in the same business; but its duty to the public requires that its service must be alike to all who are situated alike.

Rice, Robinson & Witherop *v.* the Western New York and Pennsylvania Railroad Company.

See Preference and Advantage; Reasonable Rates; Unjust Discrimination.

TO COMPETITIVE AND LOCAL POINTS.—Rates can not be arbitrarily charged in the mere discretion of a carrier. They are to be equitably adjusted with regard to the public interests as well as the carrier's. Reduced rates at points where competitive influences are controlling must not fall below some revenue from the traffic in excess of cost, and higher rates at other points, required for the necessary revenue of a carrier, must be reasonable in themselves, and also relatively reasonable in comparison with the competitive rate.

Lehmann, Higginson & Co. *v.* Southern Pacific Company *et al.*

The addition of through rate to basing point and that local rate which will give the lowest combination criticised.

Hamilton & Brown *v.* Chattanooga, Rome and Columbus Railroad Company *et al.*

MANUFACTURERS' DESCRIPTION.—The market value of articles and shippers' representations to the public as to their character may be taken into account in classification. This is especially applicable to articles in which there is no free competition among producers and shippers. The volume of the traffic is an element that may also be considered in classification.

Warner *v.* New York Central and Hudson River Railroad Company *et al.*

In a proceeding brought to correct classification of a soap manufactured and sold as toilet soap, but claimed not substantially superior to other soaps sold as laundry soap and carried at lower rates, the manufacturers' description of his product for commercial purposes as being of superior value was held to warrant its classification accordingly.

MANUFACTURERS' DESCRIPTION.—Continued.

Andrews Soap Company *v.* Pittsburg, Cincinnati and St. Louis Railway Company *et al.*

Beaver & Co. *v.* Pittsburg, Cincinnati and St. Louis Railway Company *et al.*

FOOD PRODUCTS.—

In re Alleged Excessive Freight Rates and Charges on Food Products.

PIG IRON FROM DIFFERENT MILLS.—Rates charged petitioner by the defendants on pig iron are in themselves, as well as relatively, the same in substance as rates charged other manufacturers of pig iron at the producing furnaces in the State of New York.

Poughkeepsie Iron Company *v.* New York Central and Hudson River Railroad Company *et al.*

The cost of the production of pig iron at a furnace situated like that of petitioner on the Hudson River in the State of New York is much greater than at Youngstown, Ohio, or Birmingham, Ala., or at other points in the West and South; and while the aggregate rate charged petitioner to New England mills is a great deal lower than the aggregate rate charged on these Western and Southern irons at the same mills, yet it is not sufficiently so to overcome the difference in the cost of production and the consequence is that petitioner finds itself at a serious disadvantage in competing with these Western and Southern irons in the markets and mills of the New England States where there is a very great demand for this class of property. (*Ib.*)

The Commission has no power and authority in this proceeding to order other carriers not parties to this proceeding to raise their rates on pig iron transported from Youngstown and Cleveland, Ohio, to New England points in order to overcome the difference in the cost of production of pig iron now existing against petitioner; nor would the Commission enter upon the consideration of any such subject in a proceeding to which such carriers were not parties and in which such localities sought to be burdened with higher rates; for example, Youngstown and Cleveland, Ohio, had no opportunity to be heard; and the findings of fact in the present proceeding, which show that the rates already charged petitioner by the defendants are in themselves, as well as relatively, just and reasonable rates, demonstrate that the Commission could not order the defendants to lower these rates from Poughkeepsie to all points on the Boston and Albany road one-half, and Holyoke nearly one-half, in order to overcome the difference in the cost of production of pig iron now existing against petitioner. (*Ib.*)

COMPETITIVE ARTICLES—HOGS AND HOG PRODUCT.—As articles of commerce the live hog and its product are in direct competition with each other at the points named in this proceeding and in the chief markets of the country, and are entitled to rates not only reasonable and just in themselves, but relatively reasonable and just in their bearing upon these different localities.

Board of Trade of the City of Chicago *v.* Chicago and Alton Railroad Company *et al.*

ON COMPETITIVE ARTICLES SHOULD BE ADJUSTED WITH REFERENCE TO COST OF SERVICE—HOGS AND HOG PRODUCT.—The relation of rates ought to rest upon fixed and stable conditions. The fluctuations of markets are so

ON COMPETITIVE ARTICLES SHOULD BE ADJUSTED WITH REFERENCE TO COST OF SERVICE—HOGS AND HOG PRODUCT.—Continued.

frequent, especially as to competitive articles, and oftentimes unexpected, that commercial considerations alone would not furnish a sufficiently stable and fixed rule for guidance in making a rate that should remain substantially permanent through all fluctuations. The Commission does not, by a fixing of rates, attempt to overcome advantages which one producer or dealer may have in his geographical location, and to produce equality between competitors in all markets. It would be a useless task, even if it had the power, to attempt to accomplish such a result. The proper relation of rates for transportation of strictly competitive articles over the same line should be determined by reference to respective costs of service ascertained with reasonable accuracy.

Squire & Co. v. Michigan Central Railroad Company et al.

Violation by one carrier of principles laid down in this case as governing relative rates on competitive articles does not justify similar violations by its competitors. (*Ib.*)

The rates involved in this case are those on live hogs, live cattle, and the dressed products of each. These are found to be competitive commodities, and therefore entitled to relatively reasonable rates for transportation proportioned to each other according to the respective costs of service. (*Ib.*)

CORN AND CORN PRODUCTS.—

Bates v. Pennsylvania Railroad Company et al.

WHEAT AND FLOUR.—LOCALITIES.—

Kauffman Milling Company v. Missouri Pacific Railway Company et al.

COAL AND OTHER LOW-GRADE FREIGHT.—COAL AND GENERAL FREIGHT.—A railroad company had in force for a period of more than two years next before the act to regulate commerce took effect a scale of charges on anthracite coal considerably lower than its present rates, which are higher on coal than on iron ore, pig iron, and other low-grade freight, and also higher than the charges of said road on general freight, the expense of carrying which is much greater than the expense on coal. *Held*, That such higher rates on coal are unreasonable.

Coxe Brothers & Co. v. Lehigh Valley Railroad Company.

PERISHABLE AND ORDINARY FREIGHT.—

Delaware State Grange, etc., v. New York, Philadelphia and Norfolk Railroad Company et al.

Boston Fruit and Produce Exchange v. New York and New England Railroad Company.

See Reasonable Rates ; Preference or Advantage ; Unjust Discrimination ; Long and Short Haul Clause ; Classification ; Carriers

REPARATION.

AWARDED BY COMMISSION.—

Railroad Commission of Florida v. Savannah, Florida and Western Railway Company et al.

Lehmann, Higginson & Co., v. Texas and Pacific Railway Company et al.

REMOVAL OF QUESTION TO THE COURTS.—The question whether rates paid ought to be refunded having been presented to a judicial tribunal where it is now pending, the Commission will not take cognizance of it.

Bishop *v.* Duval, receiver, etc.

Harris *v.* Duval, receiver, etc.

IN PENDING PROCEEDINGS.—The amendment of March 2, 1889, expressly provides that it shall have no application to pending proceedings, and as this proceeding was pending at the time no reparation can be awarded, and the remedy of the petitioner is in the courts.

Rawson *v.* Newport News and Mississippi Valley Company.

DIFFERENCE BETWEEN THROUGH AND LOCAL RATES.—Where a carrier not subject to the act to regulate commerce, for example, a steamboat plying the Tennessee River between Decatur, Alabama, and Bridgeport, in the same State, has applied to rail carriers engaged in interstate commerce for through rates and through billing of freight and has been refused these, and during a period of several years has paid these rail carriers their local published tariff rates on freight, and now sues to recover the difference between the amount so paid on the local rates and the proportion of the through rate between the same points covered by the local rates: *Held*, That no recovery can be had in such a proceeding before the Interstate Commerce Commission, and the complain is dismissed without prejudice.

Capehart & Smith *v.* The Louisville and Nashville Railroad Company *et al.*

WHEN MADE NO ORDER WILL BE ISSUED.—

New Orleans Cotton Exchange *v.* Louisville, New Orleans and Texas Railway Company.

See Overcharge.

REPLICATION.

NOT REQUIRED.—

In re Procedure in Cases at Issue.

NOT NECESSARY TO BE FILED.—

Oregon Short Line *v.* Northern Pacific Railroad Company.

RESHIPMENT OF FREIGHTS.

AFTER TRANSPORTATION TO POINT OF SALE.—

James & Abbott *v.* East Tennessee, Virginia and Georgia Railway Company *et al.*

UNDER THROUGH BILLS.—

Chicago, Rock Island and Pacific Railway Company *v.* Chicago and Alton Railroad Company.

See Long and Short Haul Clause; Through Shipments; Through and Local Rates; Rates; Reasonable Rates.

RETURN LOADS.

FOR EMPTY CARS.—Exception to the fourth section is not justified by the fact that the lumber business of the roads of a connecting line or any of them was done in cars which carried machinery to the longer distance point when profitable return loads were not always to be had.

James & Abbott *v.* East Tennessee, Virginia and Georgia Railway Company.

FOR EMPTY CARS.—Continued.

Lehmann, Higginson & Company *v.* Southern Pacific Company
et al.

See Cars; Long and Short Haul Clause.

RIGHTS OF WAY.

TO PRIVATE LIVE STOCK CARS.—

Shamberg *v.* Delaware, Lackawanna and Western Railroad
Company *et al.*

See Preference or Advantage.

ROUTING OF FREIGHT.

RIGHTS OF SHIPPERS AND DUTIES OF CARRIERS IN REGARD TO.—

Pankey *v.* Richmond and Danville Railroad Company *et al.*

SALTED HIDES AND PELTS.

McMillan & Co. *v.* Western Classification Committee

SCHEDULES.

See Tariffs.

SEVENTH SECTION.

CONSIDERED IN CONSTRUCTION OF FIRST SECTION.—Section 7 of the act may properly be considered in construing the general jurisdictional clause of the first section.

Boston Fruit and Produce Exchange *v.* New York and New
England Railroad Company *et al.*

SHIPPERS.

REBATES TO, ON TRAFFIC DESTINED TO ADJACENT FOREIGN COUNTRY.—

In re Acts and Doings of Grand Trunk Railway Company of
Canada.

REBATES BY FREE CARTAGE OF FREIGHTS.—

Stone & Carten *v.* Detroit, Grand Haven and Milwaukee Railway
Company.

RIGHTS OF, IN THE ROUTING AND WAYBILLING OF FREIGHT.—

Pankey *v.* Richmond and Danville Railroad Company *et al.*

RIGHTS OF.—

Delaware State Grange, etc. *v.* New York, Philadelphia and
Norfolk Railroad Company *et al.*

See Reasonable Rates.

REPRESENTATIONS OF.—In the classification of articles the shipper's representations to the public as to their character may properly be taken into account in ascertaining the analogy they bear to other articles and determining the class to which they justly belong.

Warner *v.* New York Central and Hudson River Railroad Com-
pany *et al.*

Andrews Soap Company *v.* Pittsburg, Cincinnati and St. Louis
Railway Company *et al.*

SOAP.

CLASSIFICATION.—

- Proctor & Gamble *v.* Cincinnati, Hamilton and Dayton Railroad Company *et al.*
 Andrews Soap Company *v.* Pittsburg, Cincinnati and St. Louis Railway Company.
 Andrews Soap Company *v.* Pittsburg, Cincinnati and St. Louis Railway Company *et al.*
 Proctor & Gamble *v.* Pittsburg, Cincinnati and St. Louis Railway Company *et al.*
 Beaver & Co. *v.* Pittsburg, Cincinnati and St. Louis Railway Company *et al.*

SPECIAL RATES.

- New York Board of Trade and Transportation *et al.* *v.* Pennsylvania Railroad Company *et al.*

SPECIAL TRAIN SERVICE.

- Board of Trade of the City of Chicago *v.* Chicago and Alton Railroad Company *et al.*
 Delaware State Grange, etc., *v.* New York, Philadelphia and Norfolk Railroad Company *et al.*
 Boston Fruit and Produce Exchange *v.* New York and New England Railroad Company *et al.*

STATE RAILROAD COMMISSIONS.

ACTION RESPECTING CATTLE IN CAR LOADS.—The fact that by the action of certain State commissions a car is permitted to be loaded by the shipper at discretion without the car-lot rate being affected thereby is not a reason for adopting the like rule in interstate traffic, if that course is found not to be most just and politic.

Leonard & Chappell *v.* Chicago and Alton Railroad Company

COMPLAINTS BEFORE INTERSTATE COMMERCE COMMISSION.—

Railroad Commission of Florida *v.* Savannah, Florida and Western Railway Company *et al.*

See Practice.

STATE RAILROADS.

Third Annual Report of Interstate Commerce Commission.

WHEN SUBJECT TO THE ACT TO REGULATE COMMERCE.—When a State carrier engages in interstate commerce it becomes a national instrumentality for the purposes of such commerce, and is subject to regulations prescribed by the national authority. It can not limit its obligations in that business but must serve the business offered impartially and without preference or discrimination.

Mattingly *v.* Pennsylvania Company.

AS PART OF A THROUGH ROUTE.—While it is the duty of a State carrier which indulges in interstate commerce to forward traffic offered from a connecting line there is no authority under the present act to compel the carrier to forward the traffic over a route not operated or selected by itself. (*Ib.*)

See Interstate Commerce ; Traffic ; Facilities of Traffic.

STEAMBOAT LINES.

Capehart *et al.* v. Louisville and Nashville Railroad Company
et al.

See Through Routes and Through Rates.

SUBPŒNA DUCES TECUM.

Rice v. Cincinnati, Washington and Baltimore Railroad Com-
pany *et al.* *in re* Application of Petitioner.

Haddock v. Delaware Lackawanna and Western Railroad Com-
pany.

See Practice; Books, Papers, and Documents; Documentary Evi-
dence.

SURGICAL CHAIRS.

TRANSPORTATION.—Surgical chairs compared with other freight and reasons
stated as to what the rates on them should be as articles of commerce in
course of transportation.

Harvard Company v. Pennsylvania Company *et al.*

TANK CARS.

See Cars; Unjust Discrimination.

TANK STATIONS.

Rice v. Atchison, Topeka and Santa Fé Railroad Company *et al.*

TARIFFS.

MODIFICATION OF, BY CARRIERS.—

First Annual Report of Interstate Commerce Commission.

CIRCULAR CONCERNING FILING JOINT TARIFFS. (*Ib.*)

ORDER FOR PUBLICATION OF JOINT EXPORT TARIFFS. (*Ib.*)

TO BE FRAMED BY CARRIERS.—

In re Tariffs of Columbus and Western Railway Company.

PREPARATION OF.—The Commission prefers to permit carriers to work out for
themselves all tariff details, and accords a reasonable time for that pur-
pose.

Martin v. Southern Pacific Company *et al.*

SPECIAL.—

In re Tariffs of Transcontinental Lines.

FILING AND THE PUBLICATION OF.—Reduction of passenger rates without con-
sent of connecting lines over which tickets are sold, and without filing
schedules thereof with the Commission. *Held*, to be in violation of sec-
tion 6 of the act to regulate commerce.

In re Passenger Tariffs and Rate Wars.

Methods generally adopted by carriers in the preparation and publication of
rate sheets, if in substantial compliance with the law, and sufficient for
purposes of public information, while not necessarily to be accepted by
the Commission as a standard, may be acquiesced in until a better mode
can be substituted.

In re Passenger Tariffs.

New individual or joint passenger tariffs must be posted at stations to which
they apply, and tickets can legally be sold on combinations of initial or
terminal locals therewith. (*Ib.*)

FILING AND THE PUBLICATION OF.—Continued.

It appears that the Southern Pacific Company and the Atchison, Topeka and Santa Fé Railroad Company each has several stations on their lines at which no publication is made in their tariffs of the rates at these stations; and this they admit; and the Commission finds that this conduct on their part has been owing to a misapprehension and misconstruction of the law and in accordance with a usage and practice long existing among railroads; the Commission therefore orders them to make publication of the rates they charge at these stations in their tariffs; and in all other respects, as to these defendants and the Union Pacific Railroad Company, the petition in this proceeding stands dismissed.

Rice v. The Atchison, Topeka and Santa Fé Railroad Company et al.

The filing of schedules of rates with the Commission, as required by statute, raises no presumption as to the legality of such rates.

San Bernardino Board of Trade v. Atchison, Topeka and Santa Fé Railroad Company et al.

It does not appear that defendants willfully omitted or failed to notify the Commission and the public of the advance in rates complained of, or that any one has sustained damage or injury by reason of such failure or omission, and therefore there is no case made out for an application by the Commission to a district attorney of the United States for the institution of a prosecution, and no ground for a recommendation of reparation for such injury.

The Railroad Commission of Florida v. The Savannah, Florida and Western Railway Company et al.

The publication of such inland joint tariffs for the transportation of such foreign merchandise under the statute and of advances and reductions should be made at the port of entry and also at the point of destination of freight in the United States by posting the same in a public place at the depot of the carrier where the freight is received in the port of entry and where it is delivered at the place of destination in the United States.

New York Board of Trade and Transportation v. Pennsylvania Railroad Company et al.

Common carriers are required to post in their depots, stations, and offices schedules showing the rates and charges for transportation in force on the routes of such carriers, as well on freight which is, as on that which is not, for export.

New Orleans Cotton Exchange v. Louisville, New Orleans and Texas Railway Company.

First Annual Report of Interstate Commerce Commission.

CIRCULAR RELATING TO CHANGES IN JOINT TARIFFS.—

In re Joint Tariffs, Circular.

FOREIGN CARRIERS.—Foreign common carriers engaged in the transportation of passengers or property for a continuous carriage or shipment from a place in the United States to a place in an adjacent foreign country are subject to the provisions of the act in respect to the printing of schedules of rates, fares, and charges for the traffic they carry, the posting and filing with the Interstate Commerce Commission of copies of such schedules, the notice of advances and reductions, and the maintenance of the rates, fares, and charges established and in force at the time.

In re Acts and Doings of the Grand Trunk Railway Company of Canada.

FOREIGN CARRIERS.—Continued.

Such common carriers are also subject to the provisions of the act in respect to joint tariffs of rates, fares, and charges for continuous lines or routes. (*Ib.*)

FORM OF.—The form of tariffs and classifications in use criticised, and requirements of statute stated in respect thereto.

In re Tariffs and Classifications of Atlanta and West Point Railroad Company *et al.*

THROUGH EXPORT.—Whenever a tariff is established for merchandise billed or intended for export by sea, and ocean rates are not specified, either because of fluctuations or for any other reason, so that only the charge for inland transportation is definitely fixed, the tariff as filed and made public should show the rate charged by the inland carrier or carriers to the point of export, including all terminal charges and expenses, and should also show in what manner the through rate to the point of ultimate destination is to be determined, whether by addition of the ocean rate from time to time prevailing or how otherwise.

New York Produce Exchange *v.* New York Central and Hudson River Railroad Company *et al.*

ABANDONMENT OF.—Where a tariff complained of was abandoned by the carriers for a long period of time before the complaint was made and shortly after the tariff was put in force, the Commissioners will not make an order requiring the carriers to cease and desist from enforcing such tariff, because such an order would be vain and useless.

Rawson *v.* Newport News and Mississippi Valley Company *et al.*

PASSENGER.—Excursion rates are required to be published according to the provisions of section 6 of the act to regulate commerce.

Pittsburg, Cincinnati and St. Louis Railway Company *v.* Baltimore and Ohio Railroad Company.

UNLAWFUL REBATES FROM, CAUSED BY FREE CARTAGE.—

Stone & Carten *v.* Detroit, Grand Haven and Milwaukee Railway Company.

SPECIAL EMIGRANT, WHEN UNLAWFUL.—

Elvey *v.* Illinois Central Railroad Company.

See Rates; Preferences and Advantage; Unjust Discrimination.

STRAIGHT RATES TO DESTINATION SHOULD BE SHOWN ON.—

Lehmann, Higginson & Co. *v.* Southern Pacific Company *et al.*

Rice *v.* Atchison, Topeka and Santa Fé Railroad Company *et al.*

Hamilton & Brown *v.* Chattanooga, Rome and Columbus Railroad Company *et al.*

RATES TO EVERY POINT ON A LINE SHOULD BE SHOWN ON.—

Lehmann, Higginson & Co. *v.* Southern Pacific Company *et al.*

IN FORCE FOR CONSIDERABLE PERIODS.—

In re Alleged Excessive Freight Rates and Charges on Food Products.

Coxe Brothers & Co. *v.* Lehigh Valley Railroad Company.

PRODUCTION OF AT INVESTIGATIONS.—

In re Alleged Excessive Freight Rates and Charges on Food Products.

EXPORT.—

IMPORT.—

New York Board of Trade and Transportation *et al.* *v.* Pennsylvania Railroad Company *et al.*

UNLAWFUL REBATES FROM RATES SHOWN ON.—

Shamberg v. Delaware, Lackawanna and Western Railroad Company *et al.*

CONSIDERATION OF AS EVIDENCE AFTER FILING.—

Boston Fruit and Produce Exchange v. New York and New England Railroad Company *et al.*

JOINT.—A schedule of rates designated a “joint freight tariff” announcing a rate from New Orleans to Kansas City of 30 cents per hundred pounds of sugar was duly published and filed with the Commission by the New Orleans Traffic Association on behalf of the roads composing said Association “and connections.” The Texas & Pacific Railway Company, a member of said Association, in its own behalf, issued and filed a supplemental sheet announcing said rate of 30 cents effective. The several companies composing said Traffic Association operate roads extending to and leading out of New Orleans, but none of them extending to Kansas City: *Held*, That a joint tariff of rates or charges must show on its face what carriers unite in establishing such joint tariff, and that the publication and filing of said schedule and supplemental rate sheet did not establish as provided by section 6 of the Act to Regulate Commerce a joint tariff of rates and charges on a continuous line from New Orleans to Kansas City over the roads of said Association, or of any one of them, in connection with any other road or roads. *Held further*, That where freight passes over a continuous line or route operated by more than one company on which no joint tariff of rates or charges has been established, the tariff of rates or charges is the sum of the established local rates or charges of the several companies operating such continuous line.

Lehmann, Higginson & Co. v. The Texas and Pacific Railway Company *et al.*

TERMINAL CHARGES.

New York Produce Exchange v. New York Central and Hudson River Railroad Company *et al.*

McMorran *et al.* v. Grand Trunk Railway Company of Canada *et al.*

See Reasonable Rates; Tariffs.

TERMINAL EXPENSES.

Bates v. Pennsylvania Railroad Company *et al.*

TERMINAL STATIONS.

POSTING OF TARIFFS IN.—

New Orleans Cotton Exchange v. Louisville, New Orleans and Texas Railway Company.

TESTIMONY.

See Evidence.

THIRD PARTIES.

Haddock v. Delaware, Lackawanna and Western Railroad Company.

See Practice.

THIRD SECTION.

CARRIERS REFERRED TO.—The common carriers named and referred to in the last clause of section 3 of the act to regulate commerce are such alone as are subject to the provisions of that statute.

Capehart *et al.* v. Louisville and Nashville Railroad Company *et al.*
See Preference or Advantage; Through Routes and Through Rates; Facilities of Traffic; Traffic.

THIRTEENTH SECTION.

See Complainant; Complaint; Interstate Commerce Commission.

THROUGH AND LOCAL RATES.

CHARGE BASED ON THROUGH RATE ADDED TO LOCAL RATE BACK TO DESTINATION.—

Lehmann, Higginson & Co. v. Southern Pacific Railway Company *et al.*

PETROLEUM AND ITS PRODUCTS.—

Rice v. Atchison, Topeka and Santa Fé Railroad Company *et al.*

WATER AND RAILS LINES.—

Capehart *et al.* v. Louisville and Nashville Railroad Company *et al.*

THROUGH RATES MAY BE PROPORTIONATELY LOWER THAN LOCAL RATES.—

Lehmann, Higginson & Co. v. Southern Pacific Company *et al.*

Poughkeepsie Iron Company v. New York, Central and Hudson River Railroad Company *et al.*

Coxe Brothers & Co. v. Lehigh Valley Railroad Company.

ADDITION OF THROUGH RATE TO COMPETITIVE POINT AND LOCAL RATE TO DESTINATION.—

Hamilton & Brown v. Chattanooga, Rome and Columbus Railroad Company *et al.*

James & Mayer Buggy Company v. Cincinnati, New Orleans and Texas Pacific Railway Company *et al.*

See Through Routes and Through Rates; Through Rates; Local Rates; Mileage Rates.

THROUGH AND LOCAL RATES.

PROPERTY RESHIPED AT INTERMEDIATE POINT.—Where property is to be transported by rail by continuous and uninterrupted carriage from one station to another, there may be sound and legal reasons for making a charge for the through transportation which is less than the sum of the locals for the transportation of like property from point to point between such stations. But where property is billed from one station to another with the understanding that it is to be unloaded at an intermediate station, and that whether it shall be reloaded for further carriage will depend upon the volition of the shipper or of any one who may have become purchaser, the case does not fall within the reasons governing rates on through transportation, and the carrier is not at such intermediate points entitled to have the carriage protected as a through shipment as against competitors.

Chicago, Rock Island and Pacific Railway Company v. Chicago and Alton Railroad Company.

See Rates; Reasonable Rates. Long and Short Haul Clause; Preference or Advantage.

THROUGH BILLS OF LADING.

Capehart *et al.* v. Louisville and Nashville Railroad Company *et al.*
 New York Board of Trade and Transportation *et al.* v. Pennsylvania Railroad Company *et al.*

Boston Fruit and Produce Exchange v. New York and New England Railroad Company *et al.*

James & Mayer Buggy Company v. Cincinnati, New Orleans and Texas Pacific Railroad Company *et al.*

THROUGH RATES.

WHEN REQUIRED.—Through rates and through bills of lading given on other commodities and to other points similarly situated should be given on cotton when no excuse is shown for refusing same.

Harwell v. Columbus and Western Railway Company.

RATE PER TON PER MILE.—

Business Men's Association v. Chicago, St. Paul, Minneapolis and Omaha Railway Company.

Business Men's Association of the State of Minnesota v. Chicago and Northwestern Railway Company.

THROUGH AND CONTINUOUS LINES IMPLY.—

Parkhurst & Co. v. Pennsylvania Railroad Company *et al.*

Nicolai v. Pennsylvania Railroad Company *et al.*

FROM GROUPED STATIONS.—

Rend v. Chicago and Northwestern Railway Company.

WHAT ARE.—A rate is none the less a thorough rate when freight is shipped upon a through bill of lading because the initial carrier charges its local rate as part of the total rate, and the remaining lines charged an agreed rate made by percentages.

Chamber of Commerce of the City of Milwaukee v. Flint and Père Marquette Railroad Company *et al.*

When a combined rate, evidenced by a through bill of lading, has every substantial constituent of a through rate, it is not necessary that it should be formally quoted by one of the carriers to another who is engaged in the making of it in order to constitute a through rate. Names are nothing in such a transaction; the law looks at the elements and substance of the transaction itself. (*Ib.*)

Through rates as such discussed and defined. (*Ib.*)

WHEN NOT ILLEGAL.—Through rates are not necessarily illegal, which, when divided between carriers, give them less than their local rates, *provided*, that the through rate itself is not less than some one of the locals, or unjustly discriminating against individuals or localities, or so low as to burden other business with part of the cost of the business upon which it is imposed.

Lippman & Co. v. Illinois Central Railroad Company.

See Combination Rates; Reasonable Rates; Unjust Discrimination; Water and Rail Lines; Long and Short Haul Clause.

BY WATER AND RAIL LINES.—

In re Application of F. W. Clark.

See Rates; Facilities of Traffic; Traffic; Carriers.

Poughkeepsie Iron Co. v. New York Central and Hudson River Railroad Company *et al.*

King & Co. v. New York, New Haven and Hartford Railroad Company *et al.*

BY WATER AND RAIL LINES.—Continued.

Capehart *et al.* v. Louisville and Nashville Railroad Company *et al.*
 Boston Fruit and Produce Exchange v. New York and New England
 Railroad Company *et al.*

See Reasonable Rates; Mileage Rates; Through and Local Rates;
 Through Routes and Through Rates.

THROUGH ROUTES AND THROUGH RATES.

THE ACT DOES NOT PROVIDE FOR ORDERING.—

Little Rock and Memphis Railroad Company v. East Tennessee,
 Virginia and Georgia Railway Company *et al.*

Third Annual Report of Interstate Commerce Commission.

Mattingly v. Pennsylvania Company.

S. C. Capehart and Jasper Smith v. The Louisville and Nash-
 ville Railroad Company *et al.*

See Carriers; Facilities of Traffic.

TO COMPETITIVE POINTS.—

Little Rock and Memphis Railroad Company v. East Tennessee,
 Virginia and Georgia Railway Company *et al.*, 3 I. C. C. Rep.
 1, cited and affirmed.

King & Co. v. New York, New Haven and Hartford Railroad
 Company *et al.*

RAIL AND WATER LINES—CARRIERS NOT SUBJECT TO THE ACT—REPARATION—

DISMISSAL OF COMPLAINT.—Several rail carriers engaged in interstate commerce each cross or touch a navigable river, leaving a large space or territory along and near the river and between their lines that can be served only by steamboats, and in connection with steamboats these rail carriers carry freight to and receive it from this territory at points where they touch or cross the river respectively, but as to it they make through rates with only one line of steamboats, and refuse to make such through rates with other steamboats on the river. *Held*, That under the law the rail carriers may do this, and that it is not unjust discrimination nor unlawful preference. Citing Napier v. The Glasgow and Southwestern Railway Company, 1 Railway and Canal Cases.

Capehart *et al.* v. Louisville and Nashville Railroad Company
et al.

In such a case all that a steamboat has a right to demand, with which the rail carriers have refused to make through rates and to do through billing, is that the rail carriers shall receive from and deliver to such steamboat freight for transportation at their published local tariff rates. (*Ib.*)

Through rates and through billing are matters of agreement among carriers engaged in interstate commerce, and, as was decided in the case of The Little Rock and Memphis Railroad Company v. The East Tennessee, Virginia and Georgia Railroad Company, 2 Inters. Com. Rep. 454; 3 I. C. C. Rep. 1, the Commission has no power under the statute to compel them against their consent to enter into arrangements for through rates and for through billing. (*Ib.*)

An aggregate through rate is itself an entirety, although made up of agreed percentages, proportions, or divisions, as the case may be, of the entire rate among the several carriers; and where the rail carrier makes a through rate from a point on a navigable river with a steamboat line, and refuses to make such through rate with another steamboat, the Commission can not compel the rail carrier to receive freight from or deliver

RAIL AND WATER LINES—CARRIERS NOT SUBJECT TO THE ACT—REPARATION—DISMISSAL OF COMPLAINT.—Continued.

it to the steamboat with which it has refused to make a through rate and to do through billing, upon the prepayment of charges for an estimated proportion of the through rate equal in amount to that which the rail carrier receives from the steamboat line with which it has an arrangement for through rates and through billing. (*Ib.*)

Where a carrier not subject to the act to regulate commerce—for example, a steamboat playing the Tennessee River between Decatur, Alabama, and Bridgeport, in the same State—has applied to rail carriers engaged in interstate commerce for through rates and through billing of freight, and has been refused these, and during a period of several years has paid these rail carriers their local published tariff rates on freight, and now sues to recover the difference between the amount so paid on the local rates and the proportion of the through rate between the same points covered by the local rates. *Held*, That no recovery can be had in such a proceeding before the Interstate Commerce Commission, and the complaint is dismissed without prejudice. (*Ib.*)

SUBJECT DISCUSSED.

Report of Interstate Commerce Commission.

THROUGH CARRIAGE OVER CONNECTING LINES.—Through transportation over connecting lines is favored by the statute, and the rate over such through lines is correctly adjusted upon the distance through, and not upon the shorter distances over, the several lines.

Coxe Brothers & Co. v. Lehigh Valley Railroad Company.

DISCRIMINATION BETWEEN CONNECTING LINES.—The respondent, which is a carrier by a railroad running through the State of Connecticut to a point in New York, had had for some time a through billing arrangement and an agreement upon through rates for traffic over its own line destined to New York City, with petitioner's road, which connected therewith at its New York terminus. This arrangement respondent broke up, and declined to enter into any new one in its place.

The reason for breaking up the arrangement was that respondent had entered into a new arrangement with another road connecting with it at a point in Connecticut, whereby a New York City line was formed over which it was intended to take the business which formerly passed over respondent's line to petitioner's. It was not complained that petitioner's road was insolvent or not responsible for its contracts, or that the arrangement as before existing was unfair or unequal as between the parties thereto.

Such action of the respondent is held to be in violation of the second paragraph of section three of the act to regulate commerce, which requires that "every common carrier subject to the provisions of this act shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding, and delivering of passengers and property to and from their several lines and those connecting therewith, and shall not discriminate in their rates and charges between such connecting lines; but this shall not be construed as requiring any such common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business."

New York and Northern Railway Company v. New York and New England Railroad Company et al.

INTEREST IN THE COMPETING LINE.—One reason assigned for breaking up the arrangement with petitioner was that respondent was joint owner with the road making the new line, of a terminal company for delivery of freight in New York. This interest is not an excuse under the statute for discrimination against petitioner's line, and this whether the interest in the terminal company was large or small. Petitioner did not require or ask the services of the terminal company, but only to be allowed to continue as competitor for the business affected by the discrimination, and to offer its services to the public as such. It is found in the case that the public interest was injuriously affected by the discrimination. (*Ib.*)

TERMINAL DELIVERY BY AN AGENT.—It is of no importance to the question involved that after freight carried by petitioner's road reached High Bridge, in New York, its delivery from that point to the pier, which constituted the terminus of the carriage, was made by an agent or contractor employed for the purpose. Petitioner, being carrier for the whole distance, was entitled to the privileges given by the statute accordingly. (*Ib.*)

THROUGH SHIPMENTS.

PROPERTY RESHIPPED AT INTERMEDIATE STATION.—Where property is billed from one station to another with the understanding that it is to be unloaded at an intermediate station, and that whether it shall be reloaded for further carriage will depend upon the volition of the shipper or of any one who may have become purchaser, the case does not fall within the reason of governing rates on through transportation, and the carrier is not at such intermediate points entitled to have the carriage protected as a through shipment as against competitors.

Chicago, Rock Island and Pacific Railway Company v. Chicago and Alton Railroad Company.

TICKET BROKERAGE.

SUBJECT DISCUSSED.—

Report of Interstate Commerce Commission.

TICKETS.

COMMISSION ON THE SALE OF.—

Second annual report of Interstate Commerce Commission.

In re Passenger Tariffs and Rate Wars.

The practice has frequently been condemned by the Commission as one of very doubtful benefit in any case, and as positive injury in others; as one that affords opportunities, too often improved, for discrimination and fraud in the sale of tickets and of generally a source of demoralization.

Third Annual Report of the Interstate Commerce Commission.

Legislation prohibiting the payment of, recommended. (*Ib.*)

MILEAGE, EXCURSION, AND COMMUTATION.—

In re Passenger Tariffs.

See Mileage Tickets; Tariffs; Act to Regulate Commerce.

OVERCHARGE ON.—A misapprehension under which a party has paid for one journey in two sections, whereby the cost of the transportation has been made more than it would have been had a through ticket been purchased, may be lawfully corrected by return of excess, though the carriers were

OVERCHARGE ON.—Continued.

without fault and only charged for each portion of the journey the regular rates.

Sanger v. Southern Pacific Company et al.

THROUGH.—

Little Rock and Memphis v. East Tennessee, Virginia and Georgia Railway Company et al.

MILEAGE.—

Third Annual Report of Interstate Commerce Commission.

EXCURSION. (*Ib.*)

Rates at which passenger excursion tickets are sold must be published according to the provisions of section 6 of the act to regulate commerce.

Pittsburg, Cincinnati and St. Louis Railway Company v. Baltimore and Ohio Railroad Company.

COMMUTATION.—

Third Annual Report of Interstate Commerce Commission.

Pittsburg, Cincinnati and St. Louis Railway Company v. Baltimore and Ohio Railroad Company.

It was not unlawful discrimination to refuse to refund to the complainant holding a commutation ticket, who had forgotten to take it on a certain trip, and who has paid his fare, notwithstanding he supposed it was the custom to do so when he purchased the ticket.

Sidman v. Richmond and Danville Railroad Company.

DATE OF EXPIRATION.—The complainant purchased what the respondent termed a quarterly commutation ticket on the 13th day of June, specifying the number of trips that might be taken thereon as 180, but it provided that the term should expire on the 31st day of the following August, and this was known to the complainant when he made the purchase. It was similarly stated on each one of said quarterly tickets when it was to expire, viz., at the end of the third calendar month after its issue. *Held*, That the complainant was not entitled to recover any portion of the purchase price for the thirteen days less than the full quarter. (*Ib.*)

PARTY RATE.—Party-rate tickets are not commutation tickets, and when party rates are lower than contemporaneous rates for single passengers, they constitute discrimination and are illegal.

Pittsburg, Cincinnati and St. Louis Railroad Company v. Baltimore and Ohio Railroad Company.

SALE OF, BY TICKET BROKERS; LEGISLATION CONCERNING, RECOMMENDED. (*Ib.*)

SALE OF, BY TICKET BROKERS.—

Report of Interstate Commerce Commission.

TRADE CONDITIONS.

Kauffman Milling Company v. Missouri Pacific Railway Company et al.

See Commercial Considerations; Location.

TRAFFIC.

DESTINED TO POINT IN ADJACENT FOREIGN COUNTRY.—

In re Acts and Doings of Grand Trunk Railway Company of Canada.

IMPORT.—

New York Produce Exchange v. New York Central and Hudson River Railroad Company et al.

Third Annual Report of Interstate Commerce Commission.

EXPORT.—

New York Produce Exchange *v.* New York Central and Hudson River Railroad Company *et al*

Third Annual Report of Interstate Commerce Commission.

STATE AND INTERSTATE.—

Leonard *v.* Chicago and Alton Railroad Company.

Chappell *v.* Chicago and Alton Railroad Company.

Third Annual Report of the Interstate Commerce Commission.

INTERCHANGE OF.—For any advantage of which the roads were deprived by the restrictive provisions of the act to regulate commerce it is believed an equivalent was intended to be given in the equal facilities for the interchange of traffic and for receiving and forwarding persons and property under section 3 of that statute.

Third Annual Report of Interstate Commerce Commission.

RECEIPT AND DELIVERY OF.—

Alvord *v.* Chicago, Rock Island and Pacific Railway Company.

See Carriers; Facilities of Traffic; Interstate Commerce; Preference and Advantage; Reasonable Rates; Relative Rates; Unjust Discrimination.

CARRIAGE MUST YIELD SOME PROFIT TO THE CARRIER.—

Lehmann, Higginson & Co. *v.* Southern Pacific Company *et al.*

In re Alleged Excessive Freight Rates and Charges on Food Products.

SUGAR.—

Lehmann, Higginson & Co. *v.* Southern Pacific Company *et al.*

Same *v.* Texas and Pacific Railway Company *et al.*

BULK, WEIGHT, VALUE, AND CHARACTER.—

Lehmann, Higginson & Co. *v.* Southern Pacific Company *et al.*

Warner *v.* New York Central and Hudson River Railroad Company *et al.*

Andrews Soap Company *v.* Pittsburg, Cincinnati and St. Louis Railway Company *et al.*

In re Alleged Excessive Freight Rates and Charges on Food Products.

Harvard Company *v.* Pennsylvania Company *et al.*

Kauffman Milling Company *v.* Missouri Pacific Railway Company *et al.*

New York Board of Trade and Transportation *et al. v.* Pennsylvania Railroad Company *et al.*

Delaware State Grange, etc., *v.* New York, Philadelphia and Norfolk Railroad Company *et al.*

Squire & Co. *v.* Michigan Central Railroad Company *et al.*

Beaver & Co. *v.* Pittsburg, Cincinnati and St. Louis Railway Company *et al.*

PATENT MEDICINES; ALE, BEER, AND MINERAL WATER; VOLUME.—

Warner *v.* New York Central and Hudson River Railroad Company *et al.*

SOAP.—

Andrews Soap Company *v.* Pittsburg, Cincinnati and St. Louis Railway Company *et al.*

Proctor & Gamble *v.* Cincinnati, Hamilton and Dayton Railroad Company *et al.*

Beaver & Company *v.* Pittsburg, Cincinnati and St. Louis Railway Company *et al.*

FOOD PRODUCTS.—

In re Alleged Excessive Freight Rates and Charges on Food Products.

FLOUR.—

In re Alleged Excessive Freight Rates and Charges on Food Products.

King & Company *v.* New York, New England and Hartford Railroad Company *et al.*

Kauffman Milling Company *v.* Missouri Pacific Railway Company *et al.*

PETROLEUM AND ITS PRODUCTS. (*Ib.*)

Rice *v.* Atchison, Topeka and Santa Fé Railroad Company *et al.*

LIKE, OVER DIVISIONS OF CONSOLIDATED LINE.—

Rice, Robinson & Witherop *v.* Western New York and Pennsylvania Railroad Company.

LIVE HOGS.—

Board of Trade of the City of Chicago *v.* Chicago and Alton Railroad Company *et al.*

Squire & Co. *v.* Michigan Central Railroad Company *et al.*

DRESSED HOGS.—

Board of Trade of the City of Chicago *v.* Chicago and Alton Railroad Company *et al.*

Squire & Co. *v.* Michigan Central Railroad Company *et al.*

PACKING-HOUSE PRODUCT.—

Board of Trade of the City of Chicago *v.* Chicago and Alton Railroad Company *et al.*

Squire & Co. *v.* Michigan Central Railroad Company *et al.*

COMPETITIVE.—

Board of Trade of the City of Chicago *v.* Chicago and Alton Railroad Company *et al.*

Poughkeepsie Iron Company *v.* New York Central and Hudson River Railroad Company *et al.*

Delaware State Grange, etc., *v.* New York, Philadelphia and Norfolk Railroad Company *et al.*

Squire & Co. *v.* Michigan Central Railroad Company *et al.*

PIG IRON.—

Poughkeepsie Iron Company *v.* New York Central and Hudson River Railroad Company *et al.*

SURGICAL CHAIRS.—

Harvard Company *v.* Pennsylvania Company *et al.*

INTERCHANGE OF.—

Capehart *et al.* *v.* Louisville and Nashville Railroad Company *et al.*

New York and Northern Railway Company *v.* New York and New England Railroad Company *et al.*

FACILITIES OF.—

Capehart *et al.* *v.* Louisville and Nashville Railroad Company *et al.*

New York and Northern Railway Company *v.* New York and New England Railroad Company *et al.*

SALTED HIDES AND PELTS.—

McMillan & Co. *v.* Western Classification Committee.

CORN AND CORN PRODUCTS.—

Bates *v.* Pennsylvania Railroad Company *et al.*

COAL.—

Haddock v. Delaware, Lackawanna and Western Railroad Company.
Coxe Brothers & Co. v. Lehigh Valley Railroad Company.

LOW GRADE.—

Coxe Brothers & Co. v. Lehigh Valley Railroad Company.

GENERAL.—

Coxe Brothers & Co. v. Lehigh Valley Railroad Company.

WHEAT AND FLOUR.—

Kauffman Milling Company v. Missouri Pacific Railway Company *et al.*

IMPORT.—

New York Board of Trade and Transportation *et al.* v. Pennsylvania Railroad Company *et al.*

FOREIGN AND DOMESTIC. (*Ib.*)LIKE KIND OF TRAFFIC. (*Ib.*)

PERISHABLE FREIGHT.—

Delaware State Grange, etc., v. New York, Philadelphia and Norfolk Railroad Company *et al.*
Boston Fruit and Produce Exchange v. New York and New England Railroad Company *et al.*

PEACHES.—

Delaware State Grange, etc., v. New York, Philadelphia and Norfolk Railroad Company *et al.*
Boston Fruit and Produce Exchange v. New York and New England Railroad Company *et al.*

ORANGES AND LEMONS.—

Railroad Commission of Florida v. Savannah, Florida and Western Railway Company *et al.*

LIVE CATTLE.—

Squire & Co. v. Michigan Central Railroad Company *et al.*
Shamberg v. Delaware, Lackawanna and Western Railroad Company *et al.*

DRESSED BEEF.—

Squire & Co. v. Michigan Central Railroad Company *et al.*

COTTON.—

New Orleans Cotton Exchange v. Louisville, New Orleans and Texas Railway Company.

EXPORT.—

New Orleans Cotton Exchange v. Louisville, New Orleans and Texas Railway Company.

VEHICLES.—

James & Mayer Buggy Company v. Cincinnati, New Orleans and Texas Pacific Railway Company *et al.*
See Interstate Commerce.

TRAIN RATES.

Sidman v. Richmond and Danville Railroad Company.
See Rates.

TRANSPORTATION.

See Carriers : Act to Regulate Commerce ; Traffic ; Through Routes and Through Rates ; Rates ; Reasonable Rates ; Relative Rates ; Preference or Advantage ; Long and Short Hull Clause ; Unjust Discrimination ; Classification.

TWELFTH SECTION.

AMENDMENT OF.—

See Appendix H.

UNDERBILLING.

CHARACTER OF TRANSACTION.—The shipper in such cases pays freight upon a less quantity than is actually carried, the result of which is that upon the gross amount he pays a reduced rate ; in other words, a less sum than is charged to other shippers for a like service.

In re Underbilling.

VIOLATION OF LAW.—The service known as underbilling explained and found to be in contravention to the act to regulate commerce. (*Ib.*)

EXTENT OF.—Facts stated showing extent to which this device has been employed during winter of 1887-'88. (*Ib.*)

REMEDIES FOR.—Various suggestions made in respect to duties of common carrier, inspection of goods tendered for shipment, ascertaining correct weights in all cases, etc. (*Ib.*)

Second Annual Report of Interstate Commerce Commission.

UNDUE PREFERENCE.

See Preference and Advantage.

UNIFORM CLASSIFICATION.

McMillan & Co. v. Western Classification Committee.

Report of Interstate Commerce Commission.

Kauffman Milling Company v. Missouri Pacific Railway Company *et al.*

See Classification.

UNITED STATES COURTS.

ENFORCEMENT OF ORDERS OF COMMISSION IN.—

In re Alleged Excessive Freight Rates and Charges on Food Products.

UNITED STATES SENATE.

RESOLUTION DIRECTING INVESTIGATION OF ALLEGED UNREASONABLENESS OF RATES ON FOOD PRODUCTS.—

In re Alleged Excessive Freight Rates and Charges on Food Products.

UNJUST DISCRIMINATION.

DISCOUNT FOR QUANTITY.—An offer by a railroad company to give a discount to any consignee who within a year shall receive at any one station a specified amount of freight, which offer purports to be made to secure speedy dispatch, but is not conditioned on speedy dispatch being made, is void, and if a discount is made to one dealer in pursuance of it, all others will be entitled to a like discount.

DISCOUNT FOR QUANTITY.—Continued.

Providence Coal Company *v.* Providence and Worcester Railroad Company.

If the real consideration of the offer were to secure speedy dispatch, it should have been open to all who could accept it, regardless of quantity. (*Ib.*)

An offer of a special discount made professedly on one ground in the published tariff, can not, when that ground fails, be supported by referring it to some other and different ground. (*Ib.*)

A railroad company can not support a discount based on quantity of freight received by any one shipper, on the principles which are applied among merchants, whereby they give better prices in wholesale than in retail dealings. The cases are not analogous, since the naming of the quantity of freight that shall be compared to wholesale purchases must necessarily be altogether arbitrary, and the duty of impartial service which the company owes to the public will preclude special discriminations being determined by arbitrary tests. (*Ib.*)

TWO TERMINAL STATIONS AT ONE END OF ROAD.—The Providence and Worcester Railroad Company has one terminus on the river in Providence and another across the river in East Providence, the one in Providence having been first constructed, and the other later, and for the convenience of the company. From the Providence terminus to points reached from both the distance is slightly the less. The company is not at liberty to make from Providence to such common points higher charges than from East Providence, in order to force the business to the latter terminus, and would be chargeable with unjust discrimination if it should do so. (*Ib.*)

ESTOPPEL.—The fact that a railroad company for many years has paid the charge for hauling freight from wharves to its stations does not bind it to continue that practice, and if not bound by contract it may stop doing so at any time. (*Ib.*)

MILEAGE.—As the Burton Stock Car Company does not use cars of railroad companies or exchange cars in any manner, but rents them to the public for hire, the refusal of the defendants to pay the same mileage allowed on exchanges of cars between each other does not constitute unjust discrimination.

Burton Stock Car Company *v.* Chicago, Burlington and Quincy Railroad Company *et al.*

DATE OF TRANSACTION.—The act to regulate commerce does not afford a remedy for unjust discrimination which occurred before the act was passed.

Ottinger *v.* The Southern Pacific Company.

MILEAGE TICKETS.—A railroad company that sells mileage tickets must sell them impartially to all the public who apply for them; their sale to a particular class of persons at lower rates than are charged to others is unjust discrimination.

Larrison *v.* Chicago and Grand Trunk Railway Company.

Associated Wholesale Grocers of St. Louis *v.* Missouri Pacific Railway Company.

STOCK YARDS.—It is the duty of common carriers of live stock to provide reasonable and proper facilities for loading and unloading live stock free of charges other than the usual transportation charges.

Keith *v.* Kentucky Central Railroad *et al.*

PASSENGER TRANSPORTATION.—Discrimination in rates charged passengers who enjoy the same accommodations is not justified by proof that the carrier's present or future business will be thereby stimulated, or that

PASSENGER TRANSPORTATION.—Continued.

the settlement of the country will be promoted, or that those receiving the more favorable rates are persons of small means, who are about to locate permanently in the Northwest.

Smith *v.* Northern Pacific Railroad Company.

The rule under which passenger transportation should be conducted requires absolute equality of payment from all persons enjoying the same accommodations. (*Ib.*)

Colored passengers may properly be assigned separate cars on equal terms; but the accommodations provided must be the same as those provided for white passengers holding the same class of tickets.

Councill *v.* Western and Atlantic Railroad Company.

Heard *v.* Georgia Railroad Company.

RELATIVE RATES.—Rates must not only be reasonable in themselves, but they should be so relatively reasonable as to protect communities and business against undue discrimination.

Boards of Trade Union of Farmington, etc., *v.* Chicago, Milwaukee and St. Paul Railway Company.

When the same carrier operates parallel lines, and for any cause accepts lower rates on one of them, it should provide sufficient corresponding advantages to the patrons of the other line to preserve the substantial equality contemplated by the statute. (*Ib.*)

Low charges upon one of two routes operated by the same carrier should not be made up by relatively high charges upon the other, when the result disastrously affects the business of communities situated upon the latter line. (*Ib.*)

If a railway company in establishing charges on different divisions and branches of its road so adjusts them as to divert trade and business to one locality, which naturally, under an equitable adjustment of charges, would go to another, such preference is not excused by the fact that some of such charges are not entirely voluntary, but result from competition between carriers.

Raymond *v.* Chicago, Milwaukee and St. Paul Railway Company.

WATER COMPETITION.—When water competition is alleged as a justification for discrimination between localities, the same measure of proof is required to overcome the presumption that it is unjust which is necessary to work an exception under section 4.

Harwell *v.* Columbus and Western Railway Company.

DISTRIBUTION OF CARS.—Where, according to its usual experience, a railroad company has sufficient equipment to meet the demands upon it, or by reason of unusual circumstances freights have accumulated to an exceptional extent, it is not chargeable with violation of law because unable to respond at once to all demands for cars.

Riddle, Dean & Co. *v.* Pittsburg and Lake Erie Railroad Company.

Nor in such case does it violate any law by refusing to allow its cars to be sent off its line to distant points, when the business offered upon its own line keeps them fully occupied. (*Ib.*)

Where by reason of extraordinary circumstances a railroad company can not promptly meet all calls for cars, it should furnish them ratably and fairly to all shippers in proportion to the freights offered by them respectively. (*Ib.*)

DISTRIBUTION OF CARS.—Continued.

It is not a valid excuse for refusal to furnish a fair allotment of a certain class of cars that they can be more profitably employed and can supply the wants of a larger number of shippers upon another portion of the line.

Riddle, Dean & Co. v. New York, Lake Erie and Western Railroad Company.

Regular patrons are not entitled to preference in the use of equipment of common carriers. The public must be justly and equally served. (*Ib.*)

Upon the facts stated, from which it appears that it was the duty of the owners of a mine to have inquired of the agent of the railroad company in respect to cars, which they failed to do: *Held*, That a complaint of unjust discrimination can not be sustained.

Riddle, Dean & Co. v. Baltimore and Ohio Railroad Company.

BETWEEN LOCALITIES.—The fact that a refusal to give a through rate as for one shipment to shippers who purchase goods to sell again operates prejudicially to the town desiring the privilege, and favorably to another town, does not make the refusal an unjust discrimination when the same rule is applied to all towns, and the privilege accorded to none.

Crews v. Richmond and Danville Railroad Company.

La Crosse Manufacturers' and Jobbers' Union v. Chicago, Milwaukee and St. Paul Railway Company.

Unjust discrimination must consist in the doing for or allowing to one party or place what is denied to another; it can not be predicated of action which in itself is impartial. (*Ib.*)

Where a reduced rate is made at the terminus of a through route, under the compulsion of competition, a town not located on the line of the through route, but reached over a lateral connecting road, has a disadvantage of situation entailing some additional expense, and a reasonably higher rate to such town than the forced competitive rate to the more distant terminus of the through route, is not unjust discrimination.

Lehmann, Higginson & Co. v. The Southern Pacific Company *et al.*

Transportation charges are required to be relatively reasonable as well as reasonable in themselves, to prevent unjust discrimination between localities. A locality not widely dissimilar in situation and in respect of the transportation service of the same carrier to other localities where lower rates are given, is entitled to rates that bear a just relation to the lower charges made.

The Manufacturers' and Jobbers' Union of Mankato, Minn., v. The Minneapolis and St. Louis Railway Company *et al.*

AFFECTING BOSTON RATES.—No unjust discrimination shown to exist in respect to the present differential charges on business from western points to Boston as compared with New York.

Boston Chamber of Commerce v. Lake Shore and Michigan Southern Railway Company.

TANK AND BARREL RATES ON PETROLEUM AND ITS PRODUCTS.—When oil is transported in tanks permanently affixed to car bodies the tank is to be considered as part of the car, and for oil transported therein the charge for transportation should be the same by the hundred pounds that the carrier charges for transportation between the same points of barrels filled with like oil and taken in car-load lots; the carrier is guilty of unjust discrimination if the shipper in barrels is charged a higher rate.

Rice v. Louisville and Nashville Railroad Company.

TANK AND BARREL RATES ON PETROLEUM AND ITS PRODUCTS.—Continued.

In cases against carriers who were charged with discriminating unjustly in their rates as against those shipping petroleum and its products in barrels in favor of those who shipped in tank cars, the evidence, among other things, showed that in the territory served by the defendants the shipment in barrels was most dangerous, and also that when shipment was in tanks there was greater likelihood of return loads. Difference in rates made by the carriers was considerable; the Commission equalized this, but still permitted a charge for the weight of the barrel. In the same cases it was incidentally made to appear that on the Pennsylvania System of roads some of the conditions affecting rates on this traffic were the reverse of those above stated, and the rates had therefore been made the same by quantity whether the shipments were in tanks or in barrels. On the decision above referred to being made, the rates on barrel oil were raised by the managers of the Pennsylvania System so as to include a charge for the weight of the barrel. This was claimed to be done in order to come into conformity with the action of the Commission. *Held*, That the action was unwarranted. A decision on facts does not establish a principle to govern where the facts are different, and no facts which had been laid before the Commission would have authorized a ruling raising the rates on the Pennsylvania roads on barrel oil either absolutely or relatively.

In re Relative Tank and Barrel Rates on Oil.

In arriving at what is a just and reasonable rate on oil transported by a carrier on a short local line having but a small volume of business, where the cost of transportation is exceptionally great, the fact that an independent pipe line from Titusville to Buffalo transports oil between these points at lower rates than the railroad company constitutes no just reason why the railroad company should be required to reduce its rates to those of the pipe line.

Rice, Robinson & Witherop v. Western New York and Pennsylvania Railroad Company.

The charge of unjust discrimination is not sustained by the evidence in this case. (*Ib.*)

A carrier that employs different methods for the transportation of petroleum oil and its products, in car loads—for example, tank cars, in which the oil is carried in bulk, and box cars in which the oil is carried in barrels—is not relieved from its duty in respect to equality of rates by the difference it makes between its patrons in the mode of carriage, but its charges for like quantities carried between like points of shipment and destination must be equal upon the commodity itself, irrespective of the mode of carriage or the tank or barrel package in which it is contained. Differences in circumstances and conditions of transportation that are of a carrier's own creation and contrivance, or that by reasonable effort on the part of a carrier might be avoided, can not justify exceptional rates.

Rice, Robinson & Witherop v. Western New York and Pennsylvania Railroad Company.

A tank used in carrying oil is deemed by carriers part of the car, and the rate is charged only upon the contents, while for carriage in box cars the barrels containing the oil are treated as freight and the rate is charged both for the weight of the barrel and its contents. The prevention of this prejudice to shippers in barrels requires that, for purposes of rates, when a carrier uses both tank and box cars for carrying oil in car loads, the barrels shall be deemed part of the box car; and

TANK AND BARREL RATES ON PETROLEUM AND ITS PRODUCTS.—Continued.

that, as in the case of transportation in tanks, the rate shall be charged only for the weight or quantity of oil carried, exclusive of the weight of the barrels, and be the same for like weight or quantity carried in tanks. (*Ib.*)

The fact that a carrier does not own tank cars, but accepts and uses such cars supplied by some of its patrons for their own traffic, is unimportant so far as rates are concerned. It is a carrier's duty to equip its road with instrumentalities of carriage suitable for the traffic it undertakes to carry, and to furnish them alike to all who have occasion for their use, and its duty to furnish equipment can not be transferred to nor required of shippers. When a carrier accepts and uses cars for transportation owned by shippers or others, in legal contemplation it adopts them as its own for purposes of rates and carriage, and neither the manner of acquiring cars, nor inability to furnish its general patrons the use of cars similar to those furnished by some shippers for their own traffic, can excuse or justify a carrier for discrimination in rates that may give one shipper advantages over another; nor can any device, such as payment of unreasonable rent for use of cars furnished by shippers, be practiced to evade the duty of equal charges for equal service. (*Ib.*)

The allowance by a carrier to a shipper of oil in tanks, of 42 gallons, or any number of gallons, from the actual quantity put in a tank, for alleged leakage or waste in transportation, is, in the absence of a corresponding allowance to shippers in barrels, unjust discrimination and unlawful. (*Ib.*)

EVIDENCE.—Upon a complaint of unjust discrimination, to rebut the inference arising upon circumstances appearing in the proofs, evidence is admissible to show that during a long course of business the carrier has never exhibited any unfriendly spirit toward the shipper, and that, on the contrary, its agents made extra exertions in good faith to accommodate the shipper in the matter complained of.

Rice *v.* Louisville and Nashville Railroad Company.

SHORT BRANCH ROADS.—

Heck & Petree *v.* East Tennessee, Virginia and Georgia Railway Company *et al.*

COMBINATION RATES.—Rates obtained by combination which are lower than tariff rates for the same point are unjust and illegal.

Martin *v.* Southern Pacific Company *et al.*

BETWEEN SMALL AND LARGE TOWNS.—Trade centers or large commercial towns are not, as a matter of right, entitled to have more favorable rates than the smaller towns for which they form distributing centers; and if carriers shall give to such smaller towns rates as favorable as to the larger, the Commission will not interfere.

Martin *et al.* *v.* Chicago, Burlington and Quincy Railroad Company *et al.*

The principles laid down in the case of Crews *v.* Richmond and Danville Railroad Company (1 I. C. C. Rep., 401) restated and reaffirmed. (*Ib.*)

TRANSPORTATION IN CARS OF OTHER COMPANIES.—The law does not forbid a carrier from obtaining cars for the transportation of freight over its line from other carriers or car-furnishing companies, but in every such instance the rates of freight must be exactly the same, and none other, as they would be if such cars were owned by the carriers so using them.

Scofield *et al.* *v.* Lake Shore and Michigan Southern Railway Company.

TRANSPORTATION IN CARS BELONGING TO THE SHIPPER.—The law does not forbid a carrier from obtaining cars from a shipper for the transportation of such shipper's freight over its line, but in every such instance, after deducting a reasonable rent, published in the tariffs as part of the rate and made by the carrier to the shippers for the use of such cars, the rates must be exactly the same, and none other, as upon freight transported in the same service in the carrier's own cars. (*Ib.*)

MILK TRANSPORTATION.—The existing arrangement by which the same rate is charged for the transportation of milk from all points reached by the regular daily milk trains of the defendant roads found to be not illegal; and on the whole to be the best system that can be provided for the general good of all interested parties.

Howell et al. v. New York, Lake Erie and Western Railroad Company et al.

BY SPECIAL TARIFFS.—Discriminations are made and undue advantages are given by the special tariffs in question in giving different rates to places named and those not named; to the manufactured articles named and to those not named; to jobbers at places named and those not named; to manufacturers and to jobbers and other dealers.

In re Tariffs of Transcontinental Lines

PASSENGER CLASSES.—There is nothing illegal or wrongful in a railroad company making a rate for emigrants as a class and declining to give the same rate to others for whom different accommodations are furnished.

Savery & Co. v. New York Central and Hudson River Railroad Company et al.

FREE TRANSPORTATION.—The offense under section 2 of the act to regulate commerce of giving free transportation to an individual consists in the charging, demanding, collecting, or receiving by the carrier from some other person or persons a compensation for a like service when none is contemporaneously charged or received from the persons thus transported free.

Griffie v. Burlington and Missouri River Railroad Company in Nebraska.

Free transportation issued in the form of an annual pass to a person not in the regular and stated service of the carrier nor receiving any wages or salary under a contract of employment, but requested by him as compensation for throwing in his way what business he conveniently could: *Held*, To be illegal.

Slater v. Northern Pacific Railroad Company.

Third Annual Report of Interstate Commerce Commission.

TICKET BROKERS.—The employment of ticket brokers and scalpers for the sale of railroad tickets placed in their hands to be disposed of at reduced rates under pretense of paying commissions thereon: *Held*, Illegal.

In re Passenger Tariffs and Rate Wars.

Rates obtained from ticket brokers lower than those offered at the regular offices of the company effect unjust discrimination. (*Ib.*)

LOCAL AND THROUGH RATES.—Through rates are not necessarily illegal which, when divided between carriers, give them less than their local rates, provided that the through rate itself is not less than some one of the locals, or unjustly discriminating against individuals or localities, or so low as to burden other business with part of the cost of the business upon which it is imposed.

Lippman & Co. v. Illinois Central Railroad Company.

LOCAL AND THROUGH RATES.—Continued.

The proportion of one carrier in a through rate upon a long haul often is and frequently may be considerably less than its local rate for hauling the same freight over its own line, without there being any unjust discrimination, unlawful preference, or extortion involved in such a method.

New Orleans Cotton Exchange *v.* Illinois Central Railroad Company.

New Orleans Cotton Exchange *v.* Cincinnati, New Orleans and Texas Pacific Railway Company *et al.*

RATES ON BRANCH LINES.—The service may be rendered under such dissimilar circumstances as to make it lawful to charge more for the same distance on one line or branch line than on another line or branch of the same road.

Logan *et al.* *v.* Chicago and North-Western Railway Company.

A railway company while long maintaining a rate without the presence of competition on other than equal terms is making evidence that such rate is not too low. (*Ib.*)

JOINT WATER AND RAIL LINES.—The fact that a railroad company makes joint arrangements with carriers by water for through carriage at through rates for one of its branch roads will not charge it with unjust discrimination for refusing to make identical arrangements on other parts of its system, when it appears that from such other parts of its system it actually makes through arrangements by more direct route and at the same rate, which are presumptively of equal convenience to shippers.

In re Joint Rail and Water Lines.

PARTY AND PASSENGER CARLOAD RATE.—Party rates and passenger carload rates lower than contemporaneous rates for single passengers constitute unjust discrimination between persons entitled to transportation at equal rates, and are therefore illegal.

In re Passenger Tariffs.

INLAND RATES ON EXPORT TRAFFIC.—From November 4, 1887, to February 20, 1888, the trunk lines made through export rates, of which the inland proportion accepted by them was, at the port of New York, often 10 cents or more per hundred less on light traffic than the published tariff rates charged at the same time to the same port. *Held*, That the discrepancy between the proportion of the through rate accepted and the established tariffs for seaboard consignments for the same inland carriage is not shown to have been justified by any circumstances tending to show that it was just or proper, and that it must therefore be deemed an unjust and unlawful discrimination as between the transportation terminated at that point.

New York Produce Exchange *v.* New York Central and Hudson River Railroad Company *et al.*

Third Annual Report of Interstate Commerce Commission.

It is essential that any method for making rates should be practicable and not afford a cover for discrimination and injustice. The only practical mode yet devised for making through export rates, as appears by past experience, is to add to the established inland rates from the interior to the seaboard the current ocean rates. (*Ib.*)

OBLIGATIONS OF STATE CARRIERS.—When a State carrier engages in interstate commerce it becomes a national instrumentality for the purposes of such commerce, and is subject to regulations prescribed by the national au-

OBLIGATIONS OF STATE CARRIERS.—Continued.

thority. It can not limit its obligations in that business, but must serve the business offered impartially and without preference or discrimination.

Mattingly v. Pennsylvania Company.

FREE CARTAGE OF FREIGHT.—Where a common carrier subject to the act to regulate commerce has established and published its schedule of rate and charges for a station on its line, free cartage furnished by the carrier for the collection and delivery of freight carried on its road to or from such station operates as a reduction or rebate from the schedule charge and is unlawful. If free cartage at a station has the effect to reduce a rate below the charge at another station nearer the point of shipment it is unlawful as a less charge for a longer distance over the same line and in the same direction, the less being included within the greater.

Stone & Carten v. Detroit, Grand Haven and Milwaukee Railway Company.

It is not material to the question of the lawfulness of free cartage furnished at one town and not at another that the business was done in that way for many years before the act to regulate commerce was enacted. If what was done and is now done works unjust discrimination, or is in any particular obnoxious to the law, it is an abuse, and one that it must be assumed was intended to be corrected by the act. (*Ib.*)

The respondent company had a tariff schedule in effect grouping the rates from eastern points at Ionia and Grand Rapids, in Michigan, Ionia being the shorter distance, and furnished free cartage at Grand Rapids and not at Ionia. (*Ib.*)

Upon complaint of a firm of dealers at Ionia. *Held*, That the free cartage at Grand Rapids was in effect a rebate and unlawful. (*Ib.*)

BY SPECIAL TARIFFS ON EMIGRANTS' MOVABLES.—Where a carrier by its published general tariffs charges the general public from and to all points upon a large portion of its lines certain rates upon a class of freight and at the same time publishes and puts into force a special tariff by which it charges a class of persons named, from and to the same points on its lines, less than one-half in amount of the rates on the same class of freight that it charges the general public in its general tariffs, such a discrimination is unjust and is violative of the act to regulate commerce.

Elvey v. Illinois Central Railroad Company et al.

Such a discrimination can not be sustained upon the ground that the special tariffs are made to aid "emigrants" in moving from one State to another where land is cheap and to develop a sparsely settled country and to build up business along the carrier's lines, and upon the supposition that this constitutes substantially dissimilar circumstances and conditions to what exists when similar services are rendered by the carrier for the general public. (*Ib.*)

IN RATES ON COAL TO POINTS IN CANADA.—Upon an investigation by the Commission it appeared that the Grand Trunk Railway Company of Canada transports coal and coke under a schedule specifying a total from Buffalo, Black Rock, and Suspension Bridge, in the United States, to Hamilton, Dundas, and several other points in Canada, and that the published tariff rate for transportation from the points named to Hamilton and Dundas is \$1 a ton, but that it accepts a reduced charge or allows a rebate of 25 cents a ton in favor of certain consignees at Hamilton, Dun-

IN RATES ON COAL TO POINTS IN CANADA.—Continued.

das, and other points in Canada: *Held*, That the reduced charge accepted or rebate allowed is in violation of the act to regulate commerce and unlawful.

In re Acts and Doings of the Grand Trunk Railway Company of Canada.

See Interstate Commerce; Classification; Preference and Advantage; Underbilling Passengers.

DEFECTIVE TARIFFS AND DIFFERENT CLASSIFICATIONS.—It was found by the Commission in an investigation that certain carriers failed to show on their tariffs the rates actually charged to shippers, and that combination rates were given different from the rates published on said tariff, and that different classifications were used at times upon one carrier's road for shipments of the same commodity to neighboring points, and at other times two or more classifications were employed upon the same shipment.

In re Tariffs and Classifications of Atlanta and West Point Railroad Company *et al.*

WHITE AND COLORED PASSENGERS.—It is a lawful duty that a carrier, like the defendant, owes to the traveling public in carrying out its rule of furnishing separate cars to white and colored passengers on its line engaged in interstate travel, to make them equal in comforts, accommodation, and equipment, without any discrimination. *Held*, That the action of the company was in violation of the law.

Heard v. Georgia Railroad Company.

MILEAGE, EXCURSION, AND COMMUTATION TICKETS.—Must be offered impartially to all who accept the conditions on which they are issued.

Report of Interstate Commerce Commission.

CAR MILEAGE.—Cars should be owned by the carrier itself and furnished to all alike, or, if owned by the shipper, only such reasonable allowance for their use should be made as to permit no advantage to the private owner of cars who is also a shipper, nor afford a margin for paying rebates to other shippers. (*Ib.*)

BETWEEN CORN AND CORN PRODUCTS.—The defense of water competition from Chicago and the lake shipping points to seaboard points east, as a justification for an otherwise unjustifiable discrimination in rate between corn and its direct products from Indianapolis to said seaboard points was held to be untenable, owing to the situation of Indianapolis as to the lakes and to the location of the territory where the corn was mainly raised that was marketed at Indianapolis, and to the other facts established in this case.

Bates v. Pennsylvania Railroad Company et al.

Upon the evidence produced at the former hearing it was decided that no reason was shown for a differential rate between corn and the direct products of corn, eastward between Indianapolis and the seaboard. The difference in rate complained of was 4½ cents per hundred pounds between Indianapolis and New York, this being the proportion, according to distance, of a five cent differential between Chicago and New York. Since the first hearing the defendants have reduced the differential to 2½ cents per hundred pounds. The complainants claimed there should be no difference. The evidence produced at the rehearing satisfied the Commission, upon the grounds stated in the opinion, that the former order should be vacated, and that no further order should now be made. (*Ib.*).

PASSENGER RATES.—Passenger excursion rates are required to be published according to the provisions of section 6 of the act to regulate commerce.

Pittsburg, Cincinnati and St. Louis Railway Company *v.* Baltimore and Ohio Railroad Company.

Party rate tickets are not commutation tickets, and when party rates are lower than contemporaneous rates for single passengers they constitute discrimination and are illegal. (*Ib.*)

The principles laid down. *In re* Passenger Tariffs, 2 I C. C. Rep., 649, cited and reaffirmed. (*Ib.*)

CARLOAD AND LESS THAN CARLOAD QUANTITIES.—Under the official classification the articles known in trade as grocery articles are so classified as to discriminate unjustly in rates between carloads and less than carloads upon many articles, and a revision of the classification and rates to correct unjust differences and give these respective modes of shipment more relatively reasonable rates is necessary and is so ordered.

Thurber *et al.* *v.* New York Central and Hudson River Railroad Company *et al.*

Leggett & Co. *v.* Same.

Greene *v.* Same.

COMMUTATION-TICKET HOLDERS.—The respondent issued commutation tickets for a stated number of trips within a specified time, subject to several conditions, one of which was that the purchaser should have no claim for rebate on account of nonuse of the ticket from any cause; another that it be presented to the conductor for cancellation of each trip when taken. A commuter had to pay the conductor full fare if he did not have his ticket, but in such cases the respondent had fallen into the habit of refunding the same on presentation of the ticket for cancellation of the trip at the proper office of the company. About three weeks prior to the complainant's purchase of his ticket, the respondent had discontinued this habit and had given notice to that effect in a new tariff sheet filed with the Interstate Commerce Commission and posted in the stations of the railroad as required by law on a change of tariff rates. *Held*, That it was not an unlawful discrimination to refuse to refund to the complainant who held such tickets, but had forgotten to take it on a certain trip and paid his fare, notwithstanding he supposed the former custom was in vogue when he purchased his ticket.

Sidman v. Richmond and Danville Railroad Company.

It was a regulation of the respondent company, published on its public tariff schedules filed and posted as required by the act to regulate commerce, that the conductor should collect fare on trains from passengers without tickets by adding 25 cents to single trip rates. *Held*, That it was not unjust discrimination against the complainant to exact this addition from him. (*Ib.*)

LOCAL AND THROUGH TRAFFIC.—The Union Pacific Railway Company entered into a contract with the Rock Island Railway Company by which for a valuable consideration the latter company acquired a right to run its through trains from and to points on its own road over the road of the Union Pacific Company through Kansas City and Topeka, upon the condition that no intermediate business should be done by the Rock Island Company on any part of the line used under the agreement, the Union Pacific Company retaining control of the road and of its operations, and supplying transportation accommodations for the intermediate points between Kansas City and Topeka. Upon complaint made against the Rock Island Company by a resident of Lawrence, one of the intermediate

LOCAL AND THROUGH TRAFFIC.—Continued.

towns, for refusing to perform the ordinary duties of a common carrier in receiving and discharging traffic at his town: *Held*, That the duties of the Rock Island Company were limited by its right and powers under its contract and that it was not bound to do local business prohibited by the agreement on the line used by its through trains.

Alford *v.* Chicago, Rock Island and Pacific Railway Company.

CARRIERS BY WATER.—

S. C. Capehart and Jasper Smith *v.* The Louisville and Nashville Railroad Company *et al.*

RATES ON LIVE HOGS AND HOG PRODUCT.—Certain propositions of fact established by the evidence stated as showing the character of the case and also on account of the light they throw on the conclusions reached by the Commission: *Held*, That the higher rates charged on live hogs than on hog products from Missouri River points and interior points in the States of Iowa and Missouri to Chicago constitute unjust discrimination against packers and buyers of Chicago.

The Board of Trade of the City of Chicago *v.* The Chicago and Alton Railroad Company *et al.*

See Act to Regulate Commerce; Classification; Preference and Advantage.

COAL RATES.—

Haddock *v.* Delaware, Lackawanna and Western Railroad Company.

SEPARATE ACCOUNTS OF COAL TRANSPORTATION BY CARRIER WHO IS ALSO A MINER AND SHIPPER OF COAL.—The Commission can not, for the purpose of discovering and preventing unjust discrimination by respondent, which is both a shipper and carrier of its own products over its own line, compel it to keep separate accounts showing what it charges itself for transportation or what the cost of transportation to it is; and even were such a separate account required, it would form no safe guide in determining whether respondent did or did not use its power as a carrier oppressively. (*Ib.*)

WHEAT AND WHEAT FLOUR.—For reasons peculiar to the territory lying west of the Mississippi River, comprising a large portion of Texas, the State of Missouri, and a considerable part of Kansas, the rates on wheat and wheat flour are grouped without reference to distance, and a lower rate has been charged on wheat than on wheat flour for fifteen years or more. Prior to 1886 the difference in the two rates was 15 cents per 100 hundred pounds or greater. In 1886 a readjustment of rates was made, and upon consideration of all the circumstances and conditions and claims of rival localities the differential was reduced to 5 cents per 100 pounds, which has since been maintained.

Kauffman Milling Company *v.* Missouri Pacific Railway Company *et al.*

Upon complaint made by millers of Missouri, supported also by millers of Kansas, against a differential of 5 cents per 100 pounds, and claiming an equal rate on wheat and flour carried from Missouri and Kansas into Texas: *Held*, That under the conditions existing in the territory in question a rate of 5 cents less per 100 pounds on wheat than on flour does not as matter of fact work unjust discrimination, and is not therefore unlawful. (*Ib.*)

It appearing that the carriers have at times reduced the rate on wheat without a contemporaneous reduction on flour and so made a larger differen-

WHEAT AND WHEAT FLOUR.—Continued.

tial than 5 cents per 100 pounds, which is sometimes maintained for a considerable period, it is found that a differential exceeding 5 cents per 100 pounds works unjust discrimination, and is unlawful. (*Ib.*)

The decision in this case applies only to the present situation in the territory in question, and is not intended to lay down a permanent rule for the future nor to apply elsewhere. (*Ib.*)

BETWEEN LOCALITIES.—Upon complaint by dealers at Humboldt, Kans., against the respondent lines for unjust discrimination in charging a rate of 65 cents per 100 pounds on sugar transported from San Francisco to Kansas City, and 85 cents per 100 pounds upon the same commodity from San Francisco to Humboldt, more than 100 miles shorter distance but not on the through line: *Held*, That the reduced rate to Kansas City being forced upon the carriers by competitive conditions beyond their control, and the rate to Humboldt not being unreasonable in itself but lower than it would be except for the influence of the competitive conditions at Kansas City, and it not appearing that substantial injustice results from the higher rate at Humboldt, the lower rate to Kansas City and the higher rate to Humboldt are not deemed to be in contravention of the statute.

Lehmann, Higginson & Co. v. Southern Pacific Company et al.

Exact mathematical equality between all localities is not attainable. Some slight differences in the immense complication of localities and of roads are inevitable, and if these differences are substantially reasonable there is no unjust discrimination. (*Ib.*)

Transportation charges are required to be relatively reasonable as well as reasonable in themselves, to prevent unjust discrimination between localities. A locality not widely dissimilar in situation and in respect of the transportation service of the same carrier to other localities where lower rates are given, is entitled to rates that bear a just relation to the lower charges made.

Manufacturers' and Jobbers' Union of Mankato v. Minneapolis and St. Louis Railway Company et al.

Complaint being made of unjust discrimination in rates on hogs and hog product against the pork-packing interests of Chicago in favor of packing houses at Missouri River points and other points in the States of Missouri and Iowa, the Commission, after hearing and investigation, set forth in its report and opinion the facts found and its conclusions therein, and it was held that none of the various circumstances and conditions relied upon by the carriers to justify the rates complained of warranted the unjust discrimination found to exist against the city of Chicago and against packers and buyers of that city.

Board of Trade of the City of Chicago v. Chicago and Alton Railroad Company et al.

A business like that involving the preparation for consumption of such a large and leading staple and necessary of life as meat, with all the competition that exists for it in different and competing localities, brought near to each other by the fast rail lines of the country, is too large to be done in a corner, and is a conspicuous instance of a commodity that requires at the hands of carriers rates that are not only reasonable and just in themselves but relatively reasonable and just in their bearing upon these different localities. (*Ib.*)

For reasons peculiar to the territory lying west of the Mississippi River,

BETWEEN LOCALITIES.—Continued.

comprising a large portion of Texas, the State of Missouri, and a considerable part of Kansas, and rates on wheat and wheat flour are grouped without reference to distance, and a lower rate has been charged on wheat than on wheat flour for fifteen years or more. Prior to 1886 the difference in the two rates was 15 cents a hundred pounds or greater. In 1886 a readjustment of rates was made, and upon consideration of all the circumstances and conditions and claims of rival localities the differential was reduced to 5 cents a hundred pounds, which has since been maintained. Upon complaint made by millers of Missouri, supported also by millers of Kansas, against a differential of 5 cents a hundred pounds, and claiming an equal rate on wheat and flour carried from Missouri and Kansas into Texas: *Held*, That under the conditions existing in the territory in question a rate of 5 cents less 100 pounds on wheat than on flour does not as matter of fact work unjust discrimination, and is not therefore unlawful.

Kauffman Milling Company v. Missouri Pacific Railway Company et al.

It appearing that the carriers have at times reduced the rate on wheat without a contemporaneous reduction on flour, and so made a larger differential than 5 cents a hundred pounds, which is sometimes maintained for a considerable period, it is found that a differential exceeding 5 cents a hundred pounds works unjust discrimination, and is unlawful. (*Ib.*)

Reserving any questions that may arise in case a uniform classification shall be established, at present an exception to a general rule of classification or rate making may be justified by adequate considerations in view of dissimilar conditions in different portions of the country, and when a rigid application of a general rule will be injurious to important public interests an exception is only reasonable.

PATENT MEDICINES.—Not entitled to same classification as Ale, Beer, and Mineral Water.

Warner v. New York Central and Hudson River Railroad Company et al.

SOAP.—A soap advertised and sold as toilet soap, but claimed not substantially superior to certain soaps sold as laundry soaps, was classified in the second class with toilet soaps instead of fourth class with laundry soaps. *Held*, That the manufacturer's description of his product for commercial purposes as an article of superior grade and value warrants its classification accordingly.

Andrews Soap Company v. Pittsburg, Cincinnati and St. Louis Railway Company et al.

Where two kinds of soap are made use of for the same purposes, and are advertised and held out to the world as suited for like purposes, and are substantially equal in value, they should both for purposes of transportation and rating be placed in the same classification.

Beaver & Co. v. Pittsburg, Cincinnati and St. Louis Railway Company et al.

The soaps known as the Ivory Soap and the Grand Pa's Wonder Soap fall within this rule. Both are represented as suitable for laundry and also for toilet purposes, and both are used for those purposes. It would therefore be unjust discrimination to place one of them in a classification as toilet soap and the other in a much lower classification as laundry soap. (*Ib.*)

DISCRIMINATION BETWEEN SHIPPERS OVER DIFFERENT DIVISIONS OF CONSOLIDATED LINE.—The acquisition and consolidation by a rail carrier under one system of management of different competing lines of road serving the same territory in the carriage of competitive traffic to the same markets, can not create a right on the carrier to take advantage of the consolidation of interests to deprive the public of the benefits of fair competition, nor afford warrant for oppressive discrimination with a view to its own interests, such as equalizing profits from its several divisions, by making rates and charges for one division that give profitable markets to a portion of its patrons, and higher rates and charges for another division that are destructive to the pursuits of other patrons who are competitors in the same business; but its duty to the public requires that its service must be alike to all who are situated alike.

Rice, Robinson & Witherop *v.* Western New York and Pennsylvania Railroad Company.

FURNISHING CARS—MILEAGE ON TANK CARS.—The fact that a carrier does not own tank cars, but accepts and uses such cars supplied by some of its patrons for their own traffic, is unimportant so far as rates are concerned. It is a carrier's duty to equip its road with instrumentalities of carriage suitable for the traffic it undertakes to carry, and to furnish them alike to all who have occasion for their use, and its duty to furnish equipment can not be transferred to nor required of shippers. When a carrier accepts and uses cars for transportation owned by shippers or others, in legal contemplation it adopts them as its own for purposes of rates and carriage, and neither the manner of acquiring cars, nor inability to furnish its general patrons the use of cars similar to those furnished by some shippers for their own traffic, can excuse or justify a carrier for discrimination in rates that may give one shipper advantages over another; nor can any device, such as payment of unreasonable rent for use of cars furnished by shippers, be practiced to evade the duty of equal charges for equal service.

Rice, Robinson and Witherop *v.* Western New York and Pennsylvania Railroad Company.

FURNISHING CARS—MILEAGE ON LIVE STOCK CARS.—

Shamberg *v.* Delaware, Lackawana and Western Railroad Company *et al.*

STEAMBOAT LINES—THROUGH BILLING AND THROUGH RATES.—

Capehart *et al.* *v.* Louisville and Nashville Railroad Company *et al.*

CORN AND CORN PRODUCTS.—Upon the evidence produced at the former hearing it was decided that no reason was shown for a differential rate between corn and the direct products of corn, eastward between Indianapolis and the seaboard. The difference in rate complained of was $4\frac{1}{2}$ cents per hundred pounds between Indianapolis and New York, this being the proportion, according to distance, of a five-cent differential between Chicago and New York. Since the first hearing the defendants have reduced the differential to $2\frac{1}{2}$ cents per hundred pounds. The complainants claimed there should be no difference. The evidence produced at the rehearing satisfied the Commission, upon grounds stated in the opinion, that the former order should be vacated, and that no further order should now be made.

Bates *v.* Pennsylvania Railroad Company *et al.*

CARRIER WHO IS ALSO A MINER AND SHIPPER OF COAL.—SEPARATE TRANSPORTATION ACCOUNTS.—The Commission can not, for the purpose of discovering and preventing unjust discrimination by respondent, which is both a shipper and a carrier of its own products over its own line, compel it to keep separate accounts showing what it charges itself for transportation or what the cost of transportation to it is; and even were such a separate account required, it would form no safe guide in determining whether respondent did or did not use its power as a carrier oppressively.

Haddock v. Delaware, Lackawanna and Western Railroad Company.

FOREIGN AND DOMESTIC MERCHANDISE—IMPORT TRAFFIC.—With respect to that part of the carriage of such foreign merchandise between the ports of entry and the place of destination in the United States, the rule of the statute is that it is entitled to no preference in rates, charges, facilities afforded and treatment over domestic merchandise or other merchandise when these are a like kind of traffic transported from such ports of entry to such places of destination, but as to that service stands upon the same basis of equality with domestic merchandise or other freight as to rates, charges, facilities afforded, and treatment, and must be carried upon this part of the journey under the inland tariffs of the carriers established for the transportation of domestic merchandise or other freights and under the same rules governing their carriage, as to weight, bulk, value, expenses of carriage, and all such other circumstances and conditions as enter into the making of just and reasonable rates and of avoiding unlawful prejudice and unjust discriminations, such as is provided by the statute.

New York Board of Trade and Transportation *et al.* v. Pennsylvania Railroad Company *et al.*

The circumstances and conditions surrounding the making of the rates upon such foreign merchandise in the foreign port of shipment have had their weight and operation in its foreign carriage to the port of entry and in the charges made and facilities afforded for that service, but after such foreign merchandise has been brought within the United States on its way to destination in the United States it encounters other circumstances and conditions that are controlling in this part of its carriage, namely, the laws of the United States made for the regulation of its rates and carriage. (*Ib.*)

The term "a like kind of traffic," as it occurs in section 2 of the act to regulate commerce, and as used in this report and opinion, does not mean traffic that is identical, but it means traffic that is of "a like kind" with other freight in the elements of a fair and just classification for the purpose of arriving at a just and reasonable rate and a rate that will avoid unjust discrimination and unlawful precedence. (*Ib.*)

REMOVAL OF BY CORRECTION OF UNREASONABLE RATES.—A railroad company carrying coal as interstate traffic is the owner of the capital stock of a coal company, which under its charter holds lands, mines, buys and sells coal, and ships over the lines of said railroad company: *Held*, where such conditions result in violations of the act to regulate commerce, the only regulation practicable is the enforcement of the provision of the act requiring rates to be reasonable.

Coxe Brothers & Co. v. Lehigh Valley Railroad Company.

CLASSIFICATION USED AS A DEVICE.—When classification is used as a device to effect unjust discrimination or as a means of violating other provisions of the statute, the act requires the Commission to so revise and correct such classification and arrangement as to correct the abuse. (*Ib.*)

CHARGES ON LIVE CATTLE SHIPPED IN PRIVATE STOCK CARS.—

Shamberg v. Delaware, Lackawanna and Western Railroad Company *et al.*

REBATES TO CONSIGNEES OF LIVE STOCK.—YARDAGE CHARGES. (*Ib.*)

BASING AND LOCAL POINTS—CARRIERS NOT PARTIES TO THE PROCEEDING.—

The rates on freight from interstate points to Kramer, Ga., via the Chattanooga, Rome and Columbus Railroad, are made by taking the through rate to recognized "basing points" and adding thereto that local rate which will give the lowest combination. This method of determining a rate criticised, and, as applied to such traffic to Kramer, operates as an unjust discrimination against that locality.

Hamilton & Brown v. Chattanooga, Rome and Columbus Railroad Company *et al.*

All the carriers participating in the traffic, the rates for which were questioned in this proceeding, were not made parties, and the case, while showing that the through rates were discriminatory and unjust, failed to disclose sufficient facts upon which an accurate decision could be based, and accordingly it was held that the carriers who were parties to the proceeding be required to adjust their respective tariffs so as to avoid discrimination against Kramer, and that the carriers who were not parties be summoned to appear and show cause why a like order be not issued as to the business in which they participate, unless their tariffs are voluntarily adjusted so as to avoid the discrimination complained of. (*Ib.*)

VALUE.

See Traffic.

VOLUME OF TRAFFIC.

Warner v. New York Central and Hudson River Railroad Company *et al.*

WATER AND PIPE LINES.

Rice v. Atchison, Topeka and Santa Fé Railroad Company *et al.*

WATER AND RAIL LINES.

JOINT ARRANGEMENTS.—The act to regulate commerce does not empower the Commission to compel railroad companies to enter into joint arrangements with carrier by water for through carriage at through rates.

In re Joint Water and Rail Lines.

COMPETITION BY.—Does not justify greater charge for shorter distance while the carrier maintains the shorter distance rate where such competition is of greater force and more controlling than at the longer distance point.

James & Abbott v. East Tennessee, Virginia and Georgia Railway Company *et al.*

RELATIONS OF, DESCRIBED.—

Third Annual Report of Interstate Commerce Commission.

THROUGH RATES BY.—Through rates in interstate traffic are the subject of agreement among carriers who transport the freight, and for their existence are dependent upon such agreement; and one of the features of such rates usually is that each carrier receiving the freight pays the charges upon it of the carrier delivering it.

In re Application of F. W. Clark.

Where a line of steamships, for example, plying between New York and Wilmington, N. C., make a through rate from New York via Wilmington and the Carolina Central Railroad to interior points, by adding the steamer rate to the local tariff rate of the railroad to the interior points, there being no agreed through rates for such freight between the steamship and rail lines, the rail carrier, when the freight is tendered to it at Wilmington, is under no obligation to pay the rates earned by the steamer in transporting the freight from New York to Wilmington, but may decline to do so, leaving the steamship and the shipper to settle the matter of the steamship's charges before the carrier takes the freight and transports it to the interior point. (*Ib.*)

Rice *v.* Atchison, Topeka and Santa Fé Railroad Company *et al.*

Capehart *et al. v.* Louisville and Nashville Railroad Company *et al.*

New York and Northern Railway Company *v.* New York and

New England Railroad Company *et al.*

WHEN SUBJECT TO ACT.—

Railroad Commission of Florida *v.* Savannah, Florida and Western Railway Company *et al.*

WATER COMPETITION.

WHEN NOT SUFFICIENT TO CONSTITUTE EXCEPTION UNDER SECTION 4.—

Harwell *v.* Columbus and Western Railway Company.

IMPORTANCE OF.—

First Annual Report of Interstate Commerce Commission

EFFECT OF UNDER FOURTH SECTION. (*Ib.*)

EXCEPTIONAL CONDITIONS.—

Business Men's Association of the State of Minnesota *v.* Chicago, St. Paul, Minneapolis and Omaha Railway Company.

In re Tariffs of Transcontinental Lines.

Second Annual Report of Interstate Commerce Commission.

James & Abbott *v.* East Tennessee, Virginia and Georgia Railway Company *et al.*

WHEN NOT SUFFICIENT TO JUSTIFY DISCRIMINATION IN RATES.—

Bates *v.* Pennsylvania Railroad Company *et al.*

WHEN DISSIMILAR CIRCUMSTANCES AND CONDITIONS ARE CAUSED BY.—

New Orleans Cotton Exchange *v.* Illinois Central Railroad Company *et al.*

New Orleans Cotton Exchange *v.* Cincinnati, New Orleans and Texas Pacific Railway Company *et al.*

George Rice *v.* The Atchison, Topeka, and Santa Fé Railroad Company *et al.*

Lehmann, Higginson & Co. *v.* Southern Pacific Company *et al.*

King & Co. *v.* New York, New Haven and Hartford Railroad Company *et al.*

APPLICATION OF THE ACT TO.—

Third Annual Report of Interstate Commerce Commission.

DEMORALIZATION IN RATES CAUSED BY. (*Ib.*)

SHOULD BE MADE SUBJECT TO THE ACT.—Legislation making the act apply to carriers by water recommended. (*Ib.*)

See Long and Short Haul Clause; Water Transportation.

WHAT MAY BE CONSIDERED IN ESTIMATING THE DISSIMILARITY CREATED BY.—

Lehmann, Higginson & Co. *v.* Southern Pacific Company *et al.*

WHEN DISSIMILAR CIRCUMSTANCES AND CONDITIONS ARE NOT CREATED BY.—

San Bernardino Board of Trade *v.* Atchison, Topeka and Santa Fé Railroad Company *et al.*

James & Mayer Buggy Company *v.* Cincinnati, New Orleans and Texas Pacific Railway Company *et al.*

MORE OFTEN ENCOUNTERED ON LONG HAULS.—

Poughkeepsie Iron Company *v.* New York Central and Hudson River Railroad Company *et al.*

CASES RETAINED FOR FURTHER SHOWING.—

Rice *v.* Atchison, Topeka and Santa Fé Railroad Company *et al.*

Delaware State Grange, etc., *v.* New York, Philadelphia and Norfolk Railroad Company *et al.*

WHAT IS NECESSARY TO JUSTIFY EXCEPTION UNDER FOURTH SECTION.—

James & Mayer Buggy Company *v.* Cincinnati, New Orleans and Texas Pacific Railway Company *et al.*

See Long and Short Haul Clause.

WEIGHT.

See Traffic

WHEAT.

See Traffic.

WHEAT AND WHEAT FLOUR.

Kauffman Milling Company *v.* Missouri Pacific Railway Company *et al.*

WITNESSES.

COMPULSORY ATTENDANCE.—

In re Alleged Excessive Freight Rates and Charges on Food Products.

ATTENDANCE OF.—

Haddock *v.* Delaware, Lackawanna and Western Railroad Company *et al.*

DEPOSITIONS OF.—

See Practice.

YARDAGE CHARGES.

TO CONSIGNEES OF CATTLE.—

Shamberg *v.* Delaware, Lackawanna and Western Railroad Company *et al.*

See Preference or Advantage.



APPENDIX C.

METHODS OF CARRIERS IN THE CONSTRUCTION, PUBLICATION,
AND FILING OF RATE SCHEDULES.

**METHODS OF CARRIERS IN THE CONSTRUCTION, PUBLICATION,
AND FILING OF RATE SCHEDULES.**

INTERSTATE COMMERCE COMMISSION, AUDITOR'S OFFICE,
Washington, December 1, 1891.

Following the organization of the Commission numerous communications were received from railroad officials making inquiries as to whether the methods adopted for the construction and publication of rate sheets were in compliance with the act. The number and variety of the questions submitted upon this subject precluded their separate disposition. It was also apparent that any rules the Commission might announce at that time radically changing the prevailing methods could not at once be adopted by the carriers without inconvenience to all and possibly hardship to some. The answers, however, to many of these inquiries were to be found in the words of the act itself. In such cases the Commission promptly furnished all information possible. In reply to other and more recent inquiries the Commission has expressed definitely its interpretation of the law, and in certain instances correspondence has been published in circular form embracing the rulings of the Commission upon the points presented. Various circulars have also been issued from time to time pointing out the requirements of the act in relation to the publication of rates, no other general rules regarding the construction of tariffs have been prescribed under the authority given in section 6 of the act.

Carriers have been allowed to work out for themselves all details in the publication of tariffs, and the Commission has accepted these methods where they were in substantial compliance with the law and sufficient for public information.

The work in connection with the examination and filing of tariffs has brought to light many irregularities in their construction. It has been customary in such cases, by correspondence or otherwise, to point out these deficiencies and to suggest such improvements as appeared necessary, directing attention to the object of the act and the desirability of having all tariffs so plainly constructed that the Commission could give to them the supervision the statute intended, and that the shipper might at all times be able to determine for himself the legal charges. The Commission has also had frequent occasion to remind the carriers, through decisions and by correspondence, of their indifferent compliance with the act in these respects.

The suggestions made by the Commission for the improvement in tariffs have been in many cases complied with, and some schedules may now be said to be faultless where formerly tariffs announcing the same rates served no purpose under the law. Considering the vast number of rate sheets issued by the 600 roads filing with the Commission, it has been impossible to take up with each carrier separately the question of revision of particular tariffs. Much has been accomplished in this direction. There are still, however, many tariffs in effect which, to a greater or less degree, are defective and imperfect in their construction, and do not present the rates or the rules and regulations governing the same with clearness, and omit much of the information the law intended should be published for the guidance of shippers.

The following are presented as suggestions for improvement in the construction of tariffs:

The principal features found in the sixth section of the act are—

- (1) Carriers shall print schedules showing fares and charges.
- (2) Schedules shall be kept open to public inspection.
- (3) Schedules shall plainly state the places between which persons and property are to be carried.
- (4) Schedules shall show the classification of freight in force.
- (5) Terminal charges, and any rules or regulations which in anywise change, affect, or determine any part of the aggregate of the rates, fares, or charges shall be plainly stated upon the schedules.
- (6) Schedules shall be plainly printed in large type.
- (7) Schedules for the use of the public shall be posted in two public and conspicuous places in every depot, station, or office where passengers or freight are received for transportation, which schedules shall be accessible to the public and in such a form that they may be conveniently inspected.
- (8) Schedules covering freight received in the United States to be carried through a foreign country to any place in the United States shall be printed and kept open to public inspection.
- (9) No changes in rates which have been established shall be made except after previous notice of ten days in case of increase, or three days when reduced, which notice shall plainly state the changes to be made in the schedules then in force, and the time when the increased or reduced rates, fares, or charges will go into effect; the proposed changes shall be shown by printing new schedules, or shall be plainly indicated upon the schedules in force.
- (10) Carriers shall not charge, demand, collect, or receive any greater or less compensation for the transportation of passengers or property, or for any services in connection therewith, than is specified in such schedules of rates, fares, and charges as may at the time be in force.
- (11) Carriers shall file with the Commission copies of schedules, and shall promptly notify the Commission of changes made in the same.
- (12) Carriers shall file with the Commission copies of all contracts, agreements, or arrangements with other common carriers in relation to any traffic affected by the provisions of this act to which they may be a party.
- (13) Where several carriers unite in establishing joint tariffs copies shall be filed with the Commission.
- (14) Joint tariffs shall be made public by all carriers when directed by the Commission, and the Commission shall prescribe the measure of publicity which shall be given them, or such part of them as it may deem practicable for such carriers to publish, and the places in which they shall be published. (See order of the Commission of March 23, 1889, *in re* Publication of Joint Tariffs, and in case of Lehmann, Higginson & Co. on Joint Tariffs at conclusion of this exhibit.)
- (15) The Commission shall be given ten days' notice of an advance, or three days' notice of a reduction in joint rates, and such notice shall plainly state the proposed changes and the time when they will go into effect. The Commission may make public such proposed advances or reductions in such manner as may in its judgment be deemed practicable from time to time, and prescribe the measure of publicity which common carriers shall give to advances or reductions in joint rates. (See order of Commission of March 23, 1889, *in re* Publication of Joint Tariffs, p. 258.

(16) The Commission may determine and prescribe the form in which the schedules shall be prepared and arranged, and may change the form from time to time as found expedient.

TARIFFS SHOULD BE PRINTED IN LARGE TYPE.

It will be observed that the act plainly states that schedules shall be printed in large type. The word "type" can not be assumed to have been here used by Congress in any other than its literal sense; it was undoubtedly intended that all tariffs for publication should be so printed. Many roads have fully complied with the law in this respect and print in suitable type all tariffs which they issue; with other roads it is considered that the law has been sufficiently complied with if tariffs are produced by any of the various duplicating processes, such as hectograph, mimeograph, typewriter type, etc. Much can be said against these methods; the hectograph copy will fade in the light, and imperfect impressions are printed by either process. It frequently occurs that tariffs so printed have to be returned to the railroads because they can not be deciphered, and from their vague construction do not give sufficient information for a clear understanding of their application. Agents of the railroads receiving tariffs so constructed no doubt meet with similar difficulty, and such tariffs when posted are of no value to the shipper.

In most cases the roads having the larger traffic, and consequently the greater number of tariffs, print in type nearly all class or general tariffs applying between the principal points; such as are produced by the duplicating process are usually special tariffs or sheets issued hurriedly, covering one commodity and a limited number of points. During a year the number of such tariffs often reaches a high figure. The smaller roads are found to produce tariffs by these methods very generally and not a few of such sheets cover important traffic. With many roads the argument is freely offered that the duplicating process is less expensive than printing in type, while others state that by this plan tariffs may be prepared and issued quicker. From the short notice given in numerous instances of changes in rates it is believed that the latter reason is more often the real one, and that the question of expense has not been carefully considered. It is thought that the tariffs of many roads, which are not now printed in type and containing rates which should be published, if arranged with a view to permanency of form, could be so printed at little or no greater expense than is now necessary to produce the same tariffs by the duplicating process.

SCHEDULES SHALL PLAINLY STATE THE PLACES BETWEEN WHICH THE RATES APPLY.

To meet the above requirement it is most important that titles of the tariffs should serve to describe the rates they contain.

Tariffs are differently and indiscriminately named, as:

- Freight tariff;
- Through freight tariff;
- Joint tariff;
- Through joint tariff;
- West-bound tariff;
- East-bound tariff;
- Special joint tariff;
- Tariff of rates;
- Fertilizer tariff;
- Lumber tariff;
- Live-stock tariff, etc.

Tariffs are generally issued by the road on which the traffic originates. It, however, frequently occurs that a road will issue a tariff from points on another road to points on its own line, and such a tariff will make no reference to the initial connecting road, other than giving the name of the point from which the traffic originates. The title of the tariff will in no way indicate that it is a joint tariff, and in many cases nothing whatever appears showing that connecting roads have authorized the tariff. When a tariff is issued between points on different roads showing rates on various classes, on basis other than combination of local rates, such a tariff is a joint tariff under the law and its title should read, "Joint through tariff on general merchandise;" if it covers only one commodity the name of that commodity can be prominently shown. If a road joins in making through rates and issues tariffs in different directions such tariffs should read, "Joint west-bound freight tariff," or "Joint east-bound freight tariff," as the case may be, and if the tariff covers a single commodity only, it should give the name of that commodity in the title of the tariff, for example "Joint west-bound freight tariff on lumber."

The word "joint" should be applied only to titles of tariffs which are joint tariffs in fact, and omitted from tariffs applying between points on the same road; these latter tariffs might be called "Freight tariff on general merchandise", "Freight tariff on coal", or "Freight tariff on general merchandise between local stations". The title should make a clear distinction between individual and joint tariffs. It is thought that the separate titles above indicated, namely, "Joint freight tariffs" and "Freight tariffs" if properly applied would serve to clearly distinguish the tariffs which a road is called upon to issue. Uniformity in the language of titles would be of great service to all making use of the sheets.

It is observed that the front or title page of many tariffs contain much that could be omitted and shown elsewhere. Upon many tariffs the note of instruction to agents to post the tariffs, is given prominence to the exclusion of some rule or regulation pertaining to the charges which would be of service to shippers. All interstate tariffs announcing charges to the public are to be posted, and agents should be so instructed through general orders. Notes of explanation as to the application of the rates should not appear upon the title page when they will crowd the title or other matter properly belonging on this page. The front or title page of tariffs should contain only:

- (1) Number of tariff.
- (2) Reference in detail, by title or number, to all tariffs which are superseded, indicating in what manner the new tariff changes the rates in the previous tariffs referred to.
- (3) Title of tariff; traffic covered.
- (4) Name of road, if an individual tariff, or names of all roads uniting in making the rate if a joint tariff. In the latter case suitable wording should be used to indicate the assent of all roads to the rates contained in such tariff, as set forth in the ninth requirement below.
- (5) Date of issue.
- (6) Date effective.
- (7) Note indicating the route and names of connections.
- (8) Name and address of the official issuing the tariff.
- (9) Appropriate certification of the rates by the officers authorizing their publication. For example: "The following officers of the above-named roads concur in the rates herein given," following this the names of the proper officials.

Notes of explanation regarding the application of the rates should appear in full upon the tariff; the second page is found by many to be a suitable place for such information.

The arrangement of the points, classes, and commodities should be systematic, there should be no doubt as to whether the rates may be used in one or more directions. The language chosen for this purpose should be definite. The law contemplates that every tariff shall stand for itself. The names of places and rates should be plainly given, as well as all other information necessary for the shipper to ascertain for himself the legal charges.

Where a tariff names rates to local stations on a road or number of roads, the points should not be arranged in alphabetical order, as is frequently done, but should be arranged in order of location from point of shipment.

Where a tariff covers a large number of points arranged in alphabetical order, it is almost impossible to determine whether or not the fourth section of the act has been complied with.

A frequent irregularity is observed where changes are made in certain tariffs which affect other rates, which latter changes are not shown by any separate publication. This is brought about as follows:

A tariff is issued showing rates to all points on a road. Such rates are made progressive, according to mileage, the rate to the last or terminal point being higher than to the preceding intermediate points. From the pressure of competition or other causes it is found necessary, from the standpoint of the carrier, to reduce the rate to the more distant or terminal point. Accordingly, a new tariff is published, covering that point only and abrogating so much of the general tariff, which formerly gave the rates to that point, as may conflict with the new tariff. No announcement is made of a change in rates to the intermediate points, but upon the new tariff to the terminal point a notation appears to the effect that "no higher rate shall be charged to any intermediate point," etc., and this note, it has been claimed, would reduce rates to any intermediate points that were higher than the new rate to the terminal point, and thus prohibit a higher charge for a shorter than for a longer distance.

It will be observed that no change has been authorized in the general tariff showing the rates to the intermediate points; a new sheet has been issued for the terminal point only. The tariff first published, so far as the rates to the intermediate points are concerned, remains unchanged, and it is intended that agents at forwarding stations shall be governed by the general rule of the fourth section of the act as shown upon the new or later tariff to the terminal point, and modify the rates to the intermediate points when necessary.

This lower rate to the terminal point is frequently termed a special or an emergency rate, intended to be temporary only and to be shortly withdrawn after the movement of certain traffic, when the former or higher rate will be restored.

During the life of these separate tariffs, rates to the intermediate points are at all times subject to the tariff to the terminal point, as this latter sheet prescribes the maximum charge to any intermediate point. Under these conditions the correct rate to intermediate points may only be obtained after careful comparison of the two separate tariffs. The difficulties the ordinary shipper would encounter are at once seen to be numerous; discrimination and overcharge may easily follow without coming to his knowledge, especially if he relied on the only tariff to be found which gave definitely the rates to the intermediate points.

Changes to the terminal points are announced hurriedly, and it does not appear improbable that many agents who are authorized to name rates to the intermediate points are at first without instruction as to

the terminal rate published in the new tariff; where this occurs violations of the fourth section are no doubt numerous.

Irregularities in this respect may follow with many roads where the duties of the officers are divided so that one agent will only be interested in through traffic, with authority to make rates, while the local traffic is in charge of others. The conditions surrounding the traffic covered by the through rates would not necessarily be known to the officers in charge of local traffic; changes made in the through rates may therefore not come to their knowledge. It thus may happen that reductions are made to terminal points without corresponding changes to the intermediate points.

This manner of wording tariffs is thought by many of the carriers to meet the requirements of the law. The words of the act do not justify such a conclusion. Tariffs publishing and announcing rates to the terminal points lower than to the intermediate points, and providing a maximum for the intermediate points by a notation that "intermediate rates will not be higher," do not serve as a proper announcement of the changes in the higher rates to intermediate points. Rates to intermediate points should be changed and properly announced when affected by the terminal rate, and such announcement should be made as the act contemplates. The law states that "changes shall be shown by printing new schedules or indicating the changes plainly on the schedules then in force."

Another instance where schedules do not plainly state the points between which rates apply is observed in tariffs which name rates from certain points and provide rates from other points by notations, as follows: "Usual differentials will apply;" "Usual differentials to other seaboard cities;" "Rates from Peoria, Ill., will be 5 cents lower than Chicago." Tariffs from western grain shipping points name rates to the Mississippi River and provide that "Rates to Chicago will be 5 cents higher."

An illustration of the use of the phrase "Usual differentials will apply," is found upon tariffs intended to name rates from St. Louis, Cairo, Columbus, Ky., etc., to southern points. Figures are given from St. Louis only; no figures are stated from Cairo or Columbus, and rates from these points may only be obtained after the deduction of certain differentials, which are not given on the same sheet, nor is any reference made to the particular sheets on which they may be found. The title of the tariff is misleading so far as Cairo and Columbus are concerned, as the actual rates are not to be found upon the tariff from either of these points. It was noticed that ample room was afforded by these tariffs to include the figures from Cairo and Columbus. Many illustrations of this kind could be given.

A tariff of one of the southern lines shows by its title that it contains rates from Cincinnati, Chicago, etc., to Texas common points, Galveston, Shreveport, etc. Turning to the page allotted to Shreveport, rates for classes and commodities are given. A note preceding the latter reads as follows:

The following rates will apply to Shreveport from points named below except where the sum of locals to and beyond Vicksburg or New Orleans will make less, for which basis see pages 43, 44, and 45.

At page 43 the following heading is found:

Rates of freight from Cincinnati, Chicago, etc., to Shreveport, La., may be made by adding to the current rates to Vicksburg or New Orleans the arbitraries given below whenever these will make a less through rate than the regular class or commodity rate on same article.

It is seen that two sets of rates are here given for Shreveport; the one to be used for any particular shipment may only be known after careful study of the tables, list of commodities, etc., and by making the computation necessary to ascertain whether the rates given under the latter table, when added to the Vicksburg or New Orleans rate, produce lower rates than the "regular" rates to Shreveport named elsewhere. When proceeding to ascertain the rates under these rules an obstacle is at once encountered, as neither the rates to Vicksburg or New Orleans are to be found in the same tariff, nor is reference made to any sheet, in which they are contained; the "regular" rates or those definitely given may be affected by the rates to Vicksburg or New Orleans according as the result of the combination may determine. Five pages of the tariff are thus practically useless, failing entirely in their intended purpose of announcing the charges to shippers. Numerous tariffs are found to be defective in this respect, and it is the duty and within the power of the carriers to provide a remedy.

The other notation above mentioned, namely, "Rates from Peoria will be 5 cents lower than Chicago" is of the same nature. The tariffs upon which this is noticed are shown by their title to name rates from Chicago, Peoria, etc., to certain western points, but upon examination of the sheet it is seen that Peoria rates are only to be found under the above notation placed in an obscure part of the tariff.

Tariffs are often found to be too indefinite through the use of such expressions as "common points." Sheets are published naming rates to or from "Boston and New England common points," "Mississippi River common points," "Texas common points," etc., and these sheets in a majority of cases do not include a list of such common points, nor is any reference given to the sheet upon which they may be found. The same plan it may be said in other instances is followed with more care; rates named from one point are made applicable from many others, but the language chosen for this purpose, and the arrangement of the names of such points, is given with precision, and the purposes of the tariff are plain. Where this is done no objection to the plan is noticed. One set of figures may well serve to announce the rates from many points if the names of the points are plainly stated. In a majority of cases, however, it is found that the notations and references for the purpose of extending the application of the rates to other points are vague and incomplete and the tariffs are of no service to the shipper when so arranged.

It is noticed that a great many tariffs could by a little more care in the arrangement of the matter they contain, show the actual figures from such points as are often now covered by notes of reference.

The arrangement of the sheets necessary for this purpose it is thought would occasion little additional labor or expense. The law clearly requires some improvement in the line indicated in order that tariffs will plainly state the points between which rates apply.

AUTHORITY FOR THE PUBLICATION OF JOINT TARIFFS.

A striking defect observed in most joint tariffs is the omission to indicate the authority for their publication. Names of roads and officials appear in profusion upon many joint tariffs, and by common consent this is construed to mean that such roads participate in the rates given, yet no language is to be found upon the tariffs to justify this interpretation, nor is the Commission otherwise informed that the through rates shown were made under agreement. It has transpired in connection

with so-called joint tariffs showing rates via long routes and over several roads, that some road has disclaimed all knowledge of or participation in certain tariffs upon which its name appeared together with that of its traffic official. Where this confusion was observed it was stated that the tariff was issued on the assumption that it would be concurred in, but admittedly without authority.

Where the rates given by a through tariff are ignored by one of the carriers in the route it is not clear on what basis the through charge is determined. Presumably the dissenting road would demand its local rate; the total through charge would therefore be higher than announced by the joint tariff published at the point of origin under which the shipment was taken. The separate rates thus employed are not to be found upon the tariffs filed with the Commission, or upon those placed before the public.

Tariffs should always show by what authority they are issued, and what carriers and officials are responsible for their correctness and compliance with the act. A simple way of meeting this requirement and preventing such irregularities as above mentioned is thought to be found in the plan suggested, viz, that of placing upon the face of all joint tariffs a certification by the officials authorizing the publication of the rates. This is previously referred to under matter to be shown on title pages.

When the tariffs of fast freight lines or of associations are issued for the use of the public independently of the tariffs of individual carriers, such tariffs should be constructed to show the names of all carriers parties thereto, and the manner of their participation in the rates. They should also show fully the authority from the roads for their publication, and should contain all other information necessary for the guidance of shippers. Such tariffs should be promptly filed with the Commission, in behalf of the carriers interested; and the filing by line managers or agents or officials of associations should be under authority conferred by the roads, of which the Commission should be fully advised.

TARIFFS SHOULD INDICATE THE ROUTES OVER WHICH RATES ARE APPLICABLE.

The application of tariffs is in many instances doubtful owing to the absence of information as to the routing of the traffic. On this account also it is often impossible to determine definitely whether or not the rates shown upon such tariffs are in accordance with the fourth section of the act. Many tariffs omit to show the route by which the traffic is to be carried, even where there are no apparent obstacles to this information being fully given.

Tariffs issued by the fast freight lines, for the use of the public, naming rates between distant points, frequently omit to show over what roads such tariffs are applicable. Similar through tariffs are not issued by any individual road, and the tariffs of the fast freight lines are in such cases relied upon for the through rates. In some instances it is noticed that such tariffs will name a few of the carriers. A case at hand is the Canada Atlantic fast freight line westbound freight tariff, naming rates from Boston to St. Paul, Minn. The traffic is carried via Sault Ste. Marie, yet the only roads shown upon the tariff are the roads west of Sault Ste. Marie; the roads east, between Boston and Sault Ste. Marie, are not given and can only be assumed. A shipper desiring to avail himself of the rates of this tariff would not be able to ascertain

from the tariff to what railroad in Boston he should deliver his shipment. Tariffs of the fast freight lines are usually deficient in this respect.

In other instances individual carriers may connect with the same or different roads at one or more important junction points. Tariffs covering through rates are intended to govern via only one of these junction points, but the tariffs do not indicate which one. A correct understanding of the tariff as to routing in such cases is impossible. This would be the case if through tariffs of the New York, Lake Erie and Western Railroad, announcing through rates from New York to western points, omitted to indicate whether the rates were applicable via Buffalo or Salamanca, traffic to the same western point often being carried via both routes.

Tariffs, of fast freight lines, associations, and joint tariffs, containing through rates via routes comprised of several roads or water lines, should show the names of such carriers in the order of their service, and indicate the points of connection.

RULES AND REGULATIONS WHICH IN ANYWISE CHANGE, AFFECT, OR DETERMINE ANY PART OR THE AGGREGATE OF SUCH RATES, FARES, AND CHARGES SHOULD BE SEPARATELY STATED UPON THE TARIFF.

Through rates as shown upon tariffs frequently include terminal charges, bridge toll, and charges for cartage, switching, elevator, and demurrage, where service of this character is performed. Tariffs do not invariably show the amount of these separate charges.

All additional or exceptional charges of the nature indicated, affecting the rate, should appear upon the tariffs in order that the shipper may determine for himself whether the charges upon any shipment are subject to be increased thereby.

DISTANCE TARIFFS.

It is the custom of a majority of roads to issue what are called distance tariffs and distance tables, applicable to local traffic. Distance tariffs are often filed with the Commission without the distance tables and without reference to them if published in the same way. Such tariffs would be of no use to the shipper. Distance tariffs show rates upon the various classes and commodities for different mileage groups, generally of five or ten miles. The names of the stations do not appear upon such tariffs. The distance table shows the names of the various stations and the distance from each to all other stations.

In some cases the distance tariff contains both the table of distances and the table of rates, but the arrangement is frequently such that it is not clear how one should proceed to obtain a particular rate—there is often an absence of proper description of the rate tables and their application. Ordinarily to obtain a rate between any two stations under these tariffs, reference must be first made to the distance table for the mileage, and second to the distance tariffs for the rates for the corresponding mileage. If a rate is sought for a classified article the classification must be consulted. These three papers, namely, the distance tariff, distance table, and the classification, are all necessary to ascertain the rate.

Tariffs of this character frequently cover interstate points, and as now arranged are complicated and confusing to shippers. A conve-

nient form of announcing local rates is to be found in this method, but many improvements should be made in the wording of the tariffs and the tables should be consolidated and rearranged in order to produce such a schedule as the law contemplates.

ADOPTING TARIFFS OF OTHER ROADS, ASSOCIATIONS, ETC.

Confusion often arises from the custom of roads adopting the tariffs of associations and other carriers, and filing the same in this office without indicating in what manner they are to be applied by the road filing. Frequently the adoption of a tariff by another road does not commence with the tariff proper, but only after many supplements have been issued. Our records then show the adoption of a late supplement, but as we have not been advised of the adoption of previous supplements, or of the tariff to which the supplements belong, there is always a doubt as to whether there has been an omission to file, or whether the road filing is not concerned in the previous sheets. It is not understood what interest roads may have in many of the tariffs which they adopt and file. Often there is no obligation on the part of the line filing to post such tariffs; it has transpired in certain instances that they have been adopted simply for the information of agents.

It is noticed that tariffs of associations and of certain carriers would often serve to announce rates from points on other roads. The adoption of such tariffs under these circumstances is no doubt a convenience and a saving to the latter roads, and the plan is not seen to be objectionable if followed with some order. Roads adopting tariffs of associations or other carriers for the purpose of announcing to the public rates from their own stations should thereafter regard such tariffs the same as tariffs of their own issue. They should be provided with a supplemental title-page numbered and dated, showing plainly the names of the stations from, to, or between which the rates in the adopted tariff will apply, and the title-page should be otherwise arranged after the form of their own tariffs. Such adopted tariffs should be posted and filed with due regard to the requirements of the act relative to notice of changes.

MANNER OF CHANGING AND ABROGATING TARIFFS.

If a new tariff changes the rates given in a former tariff it is the custom to place upon the new sheet a note withdrawing or canceling the former sheet. A variety of expressions are used for this purpose, some of which are as follows:-

- Abrogating all previous tariffs.
- Abrogating all conflicting rates.
- Abrogating all conflicting portions of Tariff No. —.
- Former rates conflicting are hereby withdrawn.

and various other terms. The words "canceling" and "superseding" are used alternately with "abrogating." These references are incomplete and can be greatly improved upon; they should be more definite, and refer in each instance to the number and title of the former tariffs affected.

It is noticed that special tariffs are frequently issued upon commodities which have heretofore been covered by a class or general tariff. These special tariffs are in some cases limited to a stated period, but no reference is found upon them abrogating the rate upon the same commodity given in the general or class tariff, it being the understanding that the general or class tariff will again be in force at the expiration of the special tariff. In cases of this sort it will be seen that two

rates upon the same commodity are in effect at the same time, so far as the tariffs indicate. A failure to make proper reference to previous tariffs when new sheets are issued changing such tariffs has frequently the effect of annulling all rates. This result is not intended and is brought about as follows:

A special tariff is issued upon a commodity, which tariff bears the notation that it supersedes a rate given for the same commodity in some general tariff; the special tariff also bears a notation which limits the rate to a certain period; at the expiration of this period the special rate is discontinued. The special tariff does not state that the general tariff will again be in force when the rate in the special tariff expires, and no notice is given independently that the rates in the general tariff have again been put in force. By common consent the rate given in the general tariff would be again in effect when the special tariff expired, but nothing appears on the latter tariffs specifically providing for this. Doubt and confusion here invariably follow.

A tariff limited to a certain date should show upon its face by complete reference what tariff covering the same traffic will be in effect after that date, if any. When a separate notice is issued withdrawing special tariffs such notice should bear definite reference by title and number to the tariffs withdrawn, as well as to the tariffs in which the rates are to be found after the date of such withdrawal. Every tariff which supersedes some former tariff should refer plainly by number and date to the tariff superseded. Every tariff which supersedes a previous tariff should state upon its face the nature of the changes effected, whether advances or reductions, or in case it is a reissue of an existing tariff or consolidation of various tariffs, an explanation to this effect should appear upon the new tariff, with reference to the former sheets.

Supplements and amendments are issued to the greater portion of tariffs, and in many cases exceed the number of sheets required for the original tariff. Many tariffs three or four years old are now on file uncanceled. Only a few of the rates in the original sheets may now be in effect, the others having been changed by supplements. A tariff of this character is the Missouri Pacific Joint Through Freight Tariff No. 315-B, naming class and commodity rates from St. Louis to one thousand two hundred points in the Southwest. This tariff was first published on January 20, 1889, and various supplements to it were issued, reaching in number as high as ninety-eight. On July 6, 1890, this tariff together with supplements, was incorporated into a new tariff. The latter is still in existence, to which has since been added forty-six supplements; certain of these are arranged to embrace all previous supplements. The new consolidated tariff names rates to nearly twice the number of points given in the first tariff, and while it is apparent that some effort has been made to systematically present the rates in the latter, a study of the supplements, would bring to light variations in the rates which would not be understood except through correspondence with the officers issuing the tariff. Supplements may continue to be issued to this tariff indefinitely, each new one changing some rate in the tariff or in the earlier supplements, and thus further complicating the entire tariff.

Little thought is apparently exercised for the purpose of making the supplements self-explanatory. Any arrangement adopted in the original tariff for the purpose of facilitating the finding of rates is not always continued in the supplements, and the rates sought are only to be obtained after a careful search and comparison, requiring considerable time.

A frequent source of trouble in this connection arises from roads re-

voking the tariff and one or two of the supplements thereto, but continuing in force certain other supplements. It is not the rule that supplements may be used independently of the tariff for the purpose of obtaining rates; the latter are in most cases indispensable to a correct interpretation of the former. Therefore, supplements originally issued as part of a tariff and continued in effect alone after the cancellation of the tariff, present many deficiencies, and are far short of a compliance with the act.

Where it is found necessary to issue numerous supplements to a tariff, as shown in the case of the Missouri Pacific tariff, it does not appear impracticable to prescribe a limit to the number of supplements which shall be issued for any one tariff, the entire tariff to be republished when the limit is reached.

Tariffs should be so constructed that when possible one general tariff would serve to contain all of the rates between the same points. Commodity tariffs, amendments, or corrections should bear a close similarity to the form of the general tariff, and issued as supplements to and made part of the original tariff.

It does not appear necessary to publish separately the rates of classes and commodities between the same points. Tariffs showing commodity rates which supersede class rates previously published should be issued as amendments to the class tariffs.

This plan may at first appear to present difficulties, and may be thought by some not entirely practicable, especially at the larger cities. One objection may be found with regard to the distribution of tariffs; but it is not seen why commodity tariffs may not, at the same time, be distinct sheets and supplements to some general tariff; the distribution in such cases would not be interfered with.

The number of different kinds of tariffs could be greatly reduced, and the many separate sheets now issued embraced within a limited number of general tariffs, covering separately the traffic in different directions. The adoption of such a plan, it is confidently thought, would be an important step toward the simplification of rate sheets.

CLASSIFICATION.

Too little care is exercised in selecting titles and providing notes for freight classifications and tariffs which are intended to assist the public more readily to understand their purpose.

The Official Classification, a book which is probably more generally distributed than any other of its kind, does not show by its title that it is a document of the railroads for the use of shippers, or that it is a classification of freight, to be used in determining freight charges, nor does it contain the names of the carriers who are governed by it. The superscription is remarkably brief and is without words associating the sheet with the railroads, or otherwise defining its use.

It is frequently noticed that tariffs intended for the use of the public, covering rates on classified traffic, contain no reference to the title of the classification which is to govern such rates; the tariff alone is of no value to the shipper unless he is informed as to the classification, and often shippers are not so informed. Before they can determine from the tariffs what rates may be charged, the classification of the article offered for shipment must first be ascertained. The law reads that "schedules shall contain the classification in force." It has not been the custom of the carriers to so construct all of their tariffs; the more important ones are often so arranged, but with many roads it is not

considered practicable or necessary to publish the tariff and classification under one cover. When this is not done the roads should make reference upon all class tariffs to the classifications governing the same, and in a manner which will assist shippers to readily obtain a copy of such classification.

Claims for overcharges made by shippers upon the railroads in part arise from errors of agents and others in charging the rates under a general tariff and classification, instead of applying the commodity rate at the time in effect. It has been observed in many instances of this kind that neither the shipper nor the agent was informed of the existence of the commodity tariff. In other cases the shipper has accepted as correct the class rate as furnished by the agent, who withheld the commodity rate for the exclusive use of certain favored patrons.

The arrangement of the tariffs and classifications should be such that the existence of a commodity rate, different from the class rate, may be easily known to the shipper.

Changes in classification produce changes in rates, and such changes are therefore subject to the same rules with regard to notice of publication and filing as tariffs. They should be plainly worded, their use clearly stated and posted for public inspection. New classifications when published should plainly indicate what changes they contain in order that the shipper may easily learn what traffic is affected.

FILING TARIFFS.

Joint tariffs in which several carriers are interested are often filed by each. There is no objection to this where tariffs show a separate number for the several roads parties thereto; the files of each are thus made complete. Many roads, however, file tariffs in which they participate indirectly only, the extent of which is not apparent from the tariff. It is noticed that this is done in many cases simply out of precaution, under the plan that it is best to file *everything* rather than omit any. Where these tariffs are also filed by the road issuing the same, our files are to a large extent duplicated. In some instances it has transpired that one or more carriers about to issue a joint tariff would agree that one of their number should file the tariff with the Commission; the one selected may be the terminal road and the tariff when received would take its place in the files of that road; often no corresponding tariff is filed by the road on which the traffic originates. When called upon for rates we naturally turn to the tariffs of the initial line; if the rates sought are not there found much time may be consumed before they are located in the files of connecting roads. The files of the initial road thus appear incomplete.

It is only through the system of filing that this office may determine whether tariffs which should be posted have apparently given to the public the required notice under the law. This can only be assumed when tariffs are filed promptly by the road on which the traffic originates; when filed by intermediate or terminal roads they serve no purpose in this direction. Delays occur for which the excuse is frequently given that it was supposed that the initial road had complied with this rule of the law. For these and other reasons it is the duty of the initial carrier to see to it that all tariffs covering traffic originating on its road are forwarded to the commission promptly and in such shape that they will pass to the file and be credited to the originating road. It is the duty of all parties to joint tariffs to so arrange between themselves that each may know that the requirements of the law have been met with

respect to filing. The arrangements for this purpose could well be made so that the duty to file joint tariffs would rest with the road upon which the traffic originates.

FAILURE TO GIVE PROPER NOTICE OF CHANGES IN RATES.

The requirement of the sixth section of the act pertaining to notice of advance and reduction in rates to the public and to the Commission is often ignored. Where announcements of changes have not been promptly made it has been the custom to call the attention of carriers to such omissions. During the year ending November 30, 1891, 368 letters were written for this purpose.

FAILURE TO FILE TARIFFS.

It is of daily occurrence that our attention is directed to the failure of different roads to file tariffs with the Commission when issued. During the twelve months ending November 30, 1891, 1,679 letters were written calling for tariffs which carriers had neglected to file, and to which reference was found upon sheets already received. In response to these letters 15,182 tariffs were forwarded to the Commission, which were not filed when issued.

NUMBERING TARIFFS.

The majority of roads number their tariffs under various methods. A correct system is important. A number should serve as a part of the title of the tariff and should be plainly stated for the purpose of identifying each tariff, and further, for the purpose of abrogating or amending other tariffs. Numerous series in use by some roads could be reduced. With others no reason appears to exist why the tariffs may not be embraced in one series. Many of the larger roads find the latter plan convenient. References made to numbers are often confusing. A tariff will be numbered G. F. D. No. 678, and G. F. O. No. 1292. The sheet which abrogates this tariff will read simply No. 678 or No. 1292, without making reference to the series. If a road has many series, omitting the series and making reference as above, creates doubt as to what sheet is intended to be abrogated. This is especially the case where the same number is found under many series. Some tariffs read, "superseding all conflicting rates," without referring to numbers or titles of the tariffs so canceled, and it is impossible to tell to what extent the new tariff changes the former issues without careful comparison. Supplements and amendments to printed tariffs are in many cases without number; and where several supplements are issued to the same tariff confusion arises as to their order of application. Where roads find it necessary to issue tariffs in series, a separate series should be adopted for such, as they are required to post and file distinct from tariffs to which this requirement does not apply. The numbering should be systematic, and references to the numbers should be plain and complete to be of service to all making use of the tariffs. Some roads have adopted the plan of providing the tariffs sent to the Commission with a progressive filing number, which is independent of the number of the tariff or of the series. This plan would be of great convenience to the Commission and would no doubt be found useful by most roads.

SIZE OF TARIFFS.

Tariffs received for filing are of various sizes. Many are larger than they need be, while others are frequently on sheets so small that much of the information necessary to correctly understand their application is omitted. At the suggestion of this office many roads print their rates on sheets 11 inches long by 8 inches wide. This size is fast becoming standard, and it is found large enough to embrace all the detail necessary to properly present the rates. Many roads, however, are yet without method in this respect; their tariffs vary in size, and are on this account in many ways incomplete. Prescribing that tariffs shall be printed on sheets 11 inches long by 8 inches wide will not prevent such tariffs from being constructed to embrace all information contemplated by the law, and will result in uniformity of size, which will greatly facilitate the work of all using the tariffs.

UNIT OF QUANTITY OMITTED FROM TARIFFS.

Frequently a tariff constructed in generally good form omits to state the quantity for which the rates are named, simply giving the figures. The character of the traffic in most cases indicates the quantity for which the rate is stated, but it should be given definitely, such as "Per 100 lbs.," "Per bbl.," "Per ton," "Per car." The figures representing rates on coal sometimes appear on the tariffs thus, "415" without sign or punctuation. The rate may be \$4.15 or 41.5 cents per ton. As the distance does not always appear upon the tariffs, rates are frequently misunderstood on this account, and additional examination is necessary to verify the figures. This occurs so frequently that it is thought proper to call attention to it.

NAME OF STATE IN WHICH POINTS ARE LOCATED.

Many tariffs which could not be otherwise objected to, omit to name the State in which points are located. Roads have been called upon to improve their methods in this respect, but it seems of sufficient importance to again bring it to the attention of carriers.

ABBREVIATIONS ON TARIFFS.

Tariffs showing rates to points on other roads frequently abbreviate the names of such roads, as follows: "To points on the J. M. & I. Ry," or "To points on the C. L. & C. Ry." When this plan is followed tariffs frequently confuse the shipper, who may not be informed as to the meaning of such abbreviations, and he has to make further inquiries in order to ascertain whether the rates shown in such tariffs are the rates he wants. Carriers should be required in all cases to give the names of railroads in such a manner that they will be understood.

The whole subject as here treated pertains principally to tariffs covering freight traffic; these are more complained of and more in need of revision than passenger tariffs.

Further, in relation to the whole subject, the following circulars, rulings, etc., are appended, together with extracts from letters, decisions, and the annual reports of the Commission.

Very respectfully submitted.

C. C. McCain,
Auditor.

SECTION SIX OF THE ACT TO REGULATE COMMERCE.

Section 6 of the act is as follows:

That every common carrier subject to the provisions of this act shall print and keep open to public inspection schedules showing the rates and fares and charges for the transportation of passengers and property which any such common carrier has established, and which are in force at the time upon its route. The schedules printed as aforesaid by any such common carrier shall plainly state the places upon its railroad between which property and passengers will be carried, and shall contain the classification of freight in force, and shall also state separately the terminal charges and any rules or regulations which in anywise change, affect, or determine any part of the aggregate of such aforesaid rates and fares and charges. Such schedules shall be plainly printed in large type, and copies for the use of the public shall be posted in two public and conspicuous places in every depot, station, or office of such carrier where passengers or freight, respectively, are received for transportation, in such form that they shall be accessible to the public and can be conveniently inspected.

Any common carrier subject to the provisions of this act receiving freight in the United States to be carried through a foreign country to any place in the United States, shall also, in like manner, print and keep open to public inspection, at every depot or office where such freight is received for shipment, schedules showing the through rates established and charged by such common carrier to all points in the United States beyond the foreign country to which it accepts freight for shipment; and any freight shipped from the United States through a foreign country into the United States, the through rate on which shall not have been made public, as required by this act, shall, before it is admitted into the United States from said foreign country, be subject to customs duties as if said freight were of foreign production; and any law in conflict with this section is hereby repealed.

No advance shall be made in the rates, fares, and charges which have been established and published, as aforesaid, by any common carrier, in compliance with the requirements of this section, except after ten days' public notice, which shall plainly state the changes proposed to be made in the schedule then in force and the time when the increased rates, fares, or charges will go into effect; and the proposed changes shall be shown by printing new schedules, or shall be plainly indicated upon the schedules in force at the time and kept open to public inspection. Reductions in such published rates, fares or charges shall only be made after three days' previous public notice, to be given in the same manner that notice of an advance in rates must be given.

And when any such common carrier shall have established and published its rates, fares, and charges in compliance with the provisions of this section, it shall be unlawful for such common carrier to charge, demand, collect, or receive from any person or persons a greater or less compensation for the transportation of passengers or property, or for any services in connection therewith than is specified in such published schedule of rates, fares, and charges as may at the time be in force.

Every common carrier subject to the provisions of this act shall file with the Commission hereinafter provided for copies of its schedules of rates, fares, and charges which have been established and published in compliance with the requirements of this section, and shall promptly notify said Commission of all changes made in the same. Every such common carrier shall also file with said Commission copies of all contracts, agreements, or arrangements with other common carriers in relation to any traffic affected by the provisions of this act to which it may be a party. And in cases where passengers and freight pass over continuous lines or routes operated by more than one common carrier, and the several common carriers operating such lines or routes establish joint tariffs of rates or fares or charges for such continuous lines or routes, copies of such joint tariffs shall also, in like manner, be filed with said Commission. Such joint rates, fares, and charges on such continuous lines so filed as aforesaid shall be made public by such common carriers when directed by said Commission, in so far as may, in the judgment of the Commission, be deemed practicable; and said Commission shall from time to time prescribe the measure of publicity which shall be given to such rates, fares, and charges, or to such part of them as it may deem it practicable for such common carriers to publish, and the places in which they shall be published.

No advance shall be made in joint rates, fares, and charges, shown upon joint tariffs, except after ten days' notice to the Commission, which shall plainly state the changes proposed to be made in the schedule then in force, and the time when the increased rates, fares, or charges will go into effect. No reduction shall be made in joint rates, fares, and charges, except after three days' notice, to be given to the Commission as is above provided in the case of an advance of joint rates. The Commission may make public proposed advances, or such reductions, in such manner as may, in its judgment, be deemed practicable, and may prescribe from time to time the measure of publicity which common carriers shall give to advances or reductions in joint tariffs.

It shall be unlawful for any common carrier, party to any joint tariff, to charge, demand, collect, or receive from any person or persons a greater or less compensation for the transportation of persons or property, or for any services in connection therewith, between any points as to which a joint rate, fare, or charge is named thereon, than is specified in the schedule filed with the Commission in force at the time.

The Commission may determine and prescribe the form in which the schedules required by this section to be kept open to public inspection shall be prepared and arranged, and may change the form from time to time as shall be found expedient.

If any such common carrier shall neglect or refuse to file or publish its schedules or tariffs of rates, fares, and charges as provided in this section or any part of the same, such common carrier shall, in addition to other penalties herein prescribed, be subject to a writ of mandamus, to be issued by any circuit court of the United States in the judicial district wherein the principal office of said common carrier is situated, or wherein such offense may be committed, and if such common carrier be a foreign corporation in the judicial circuit wherein such common carrier accepts traffic and has an agent to perform such service, to compel compliance with the aforesaid provisions of this section; and such writ shall issue in the name of the people of the United States, at the relation of the Commissioners appointed under the provisions of this act; and the failure to comply with its requirements shall be punishable as and for a contempt; and the said Commissioners, as complainants, may also apply in any such circuit court of the United States for a writ of injunction against such common carrier, to restrain such common carrier from receiving or transporting property among the several States and Territories of the United States or between the United States and adjacent foreign countries, or between ports of transshipment and of entry and the several States and Territories of the United States, as mentioned in the first section of this act, until such common carrier shall have complied with the aforesaid provisions of this section of this act.

RULE RESPECTING THE FILING OF TARIFFS BY ASSOCIATIONS, COMMITTEES, ETC.

INTERSTATE COMMERCE COMMISSION,
OFFICE OF THE SECRETARY,
Washington, June 22, 1887.

J. N. FAITHORN, Esq.,
Chairman, W. and N. W. Freight Bureau, Chicago, Ill.:

DEAR SIR: In the case of schedules of passenger rates, and of joint tariffs of freight charges, and of classifications, circulars, and other matter issued by a freight bureau, association, or other traffic combination, consisting of several carriers, or issued by a committee representing a group of roads, the Interstate Commerce Commission desires a written statement from each corporation to the effect that it is a member of the association in question, and that schedules, tariffs, and classifications, circulars, and other printed matter issued by the committee, or its chairman, or other authorized official, and filed with the Commission are to be treated as if filed by such corporation itself. In case there is a written agreement under which the association works, a copy thereof should also be filed.

Upon receipt of the foregoing as evidence of the authority of the bureau, association, or committee, schedules, tariffs, and other documents issued by it will be received by the Interstate Commerce Commission, and credited to each road in the organization, as if filed by such road respectively; and in such case it will not be necessary for each carrier to file such publication individually.

A letter of transmittal stating contents should accompany each enclosure.

Very respectfully,
For the Commission.

EDW. A. MOSELEY,
Secretary.

RULES FOR FILING JOINT PASSENGER RATES COMPILED UNDER AGREEMENTS OF COMMITTEES AND ASSOCIATIONS.

INTERSTATE COMMERCE COMMISSION,
DEPARTMENT OF STATISTICS,
Washington, December 19, 1887.

DEAR SIR: At present there is no uniform method on the part of the railroads for filing with the Commission joint passenger rates which are compiled under agreement

of committees or associations. In this connection the Commission ruled on June 15th last, as follows:

"In the case of schedules of passenger rates issued by a committee representing a group of roads the Commission desires a written statement from each corporation to the effect that it is a member of the association which the committee represents, and that tariff schedules filed by the committee are to be treated as if filed by such corporation. In case there is a written agreement under which the association works a copy thereof should also be filed. Upon receipt of the foregoing as evidence of the authority of the committee, schedules of the tariffs and documents issued relating to changes in passenger rates, etc., will be received by the Commission and credited to each road in the association as if filed by such road, respectively. A letter of transmittal stating contents should accompany each inclosure."

To further perfect the plan which it was hoped the foregoing ruling would establish you are now requested to comply with the following:

First. To advise this office of the names of the committees or associations of which your company is a member, and also of the names of the commissioners or compilers to whom authority and instructions have been given to file tariffs, etc., with the Interstate Commerce Commission for your company, and the names and character of the tariffs so covered.

Second. To instruct the commissioner or compiler for such committee or association to file with this office one copy of the contract, agreement, or arrangement under which action is taken for the establishment of joint passenger rates.

Third. To instruct the commissioner or compiler of such committees or associations to file with this office all schedules of passenger rates which may be issued by him for your company separately or jointly with other roads.

Under a compliance with this arrangement it will not be necessary for each company to file such tariffs as are filed by the commissioners or compilers.

Credit for such filing will be given to each road from which advice has been received of the authority given representatives of committees or associations.

Very truly yours,

C. C. McCAIN,
Auditor.

For the Commission.

DELAY IN FILING TARIFFS.

INTERSTATE COMMERCE COMMISSION,
DEPARTMENT OF STATISTICS,
Washington, December 20, 1887.

DEAR SIR: It appears from the dates given on tariffs received at this office for filing, that many of the companies allow their tariffs to accumulate before forwarding them here. Under such arrangements it frequently occurs that the Commission does not receive advice of a change in rates until weeks after the tariffs are in effect.

In this connection your attention is called to section 6 of the "Act to Regulate Commerce," and particularly to the following extract from that section:

"Every common carrier subject to the provisions of this act shall file with the Commission hereinafter provided for copies of its schedules of rates, fares, and charges which have been established and published in compliance with the requirements of this section, and shall promptly notify said Commission of all changes made in the same."

Very truly yours,

C. C. McCAIN,
Auditor.

INSTRUCTIONS TO CARRIERS LOCATED WHOLLY WITHIN ONE STATE OR TERRITORY, AS TO THE FILING OF TARIFFS RELATING TO INTERSTATE TRAFFIC.

[Circular No. 6.]

INTERSTATE COMMERCE COMMISSION, AUDITOR'S OFFICE,
Washington, February 13, 1888.

Roads located wholly in one State or Territory, which interchange freight or passenger traffic with connections to or from points outside of such State or Territory on through tickets or bills of lading, should file tariffs covering such traffic with the Commission.

If such through rates are made by the addition of local rates to the rates of connecting roads, such local tariffs should be filed with the Commission, together with a statement that through interstate rates are made by adding such local rates to the rates of the carrier (naming it) with which connection is made.

If joint rates are made on any basis other than by the addition of the local rates to the through rates of connecting carriers, tariffs showing such rates should be filed with the Commission covering all interstate business transacted thereunder.

For the Commission:

C. C. McCAIN,
Auditor.

ORDER OF THE COMMISSION REGARDING THE PUBLICATION OF JOINT TARIFFS ON
EXPORT TRAFFIC, UNDER DATE OF MARCH 8TH, 1888.

At a meeting of the Interstate Commerce Commission held in the city of Washington on the 8th day of March, 1888.

Present: All the Commissioners.

The subject of the publication of joint tariffs being under consideration, the following preamble and order were unanimously adopted, and directed to be sent to all common carriers subject to the act to regulate commerce:

Whereas section 6 of the act to regulate commerce authorizes the Commission to direct when joint tariffs shall be made public, and to prescribe the measure of publicity to be given to the same:

It is ordered as follows:

Every tariff of rates and charges which a common carrier subject to the provisions of the act to regulate commerce, by itself or jointly with one or more other carriers, whether such carriers are or are not subject to such act, shall establish for the transportation of grain, flour, meal, meats, provisions, lard, tallow, canned goods, cotton, tobacco, live stock, or other articles of customary export, from any point within the United States to a seaport thereof, or to any point in or on the boundary of an adjacent country, or to any foreign port or place, is required to be filed with the Commission and shall be made public.

In all cases where a tariff is established for such merchandise billed or intended for export by sea, and ocean rates are not specified, either because of their fluctuation or for any other reason, so that only the charge for inland transportation is definitely fixed, the tariff as filed and made public shall show the rate charged by the inland carrier or carriers to the point of export, including all terminal charges or expenses, and shall also show in what manner the through rate to the point of ultimate destination is to be determined, whether by the addition of the ocean rate from time to time prevailing, or how otherwise. When the rate is a gross sum for the transportation of freight from a point within the United States to a port or place in a foreign country, the tariff as filed and made public shall in every case show what part of the whole is allowed to the carrier or carriers for inland transportation to the point of export by sea, including all terminal expenses or charges; and if such part is subject to be increased or diminished, contingently or otherwise, or if in any other case the charge for inland transportation is subject to any change or modification in case the property carried is exported, the fact, and the manner in which the increase, diminution, or change is to be determined, and the extent thereof, shall be stated.

Every such tariff of rates and charges shall be published by plainly printing the same in large type of at least the size of ordinary pica, and copies thereof shall be kept for the use of the public in such places and in such form that they can be conveniently inspected, at every depot or station of any carrier making or issuing the same at which any traffic to which it relates is received or delivered.

This order shall become operative on March 20, 1888.

A true copy:

EDW. A. MOSELEY,
Secretary.

PUBLICATION OF JOINT TARIFFS—EXPORT AND IMPORT TARIFFS—AND OTHER RULES
CONTAINED IN THE 6TH SECTION OF THE ACT AS AMENDED MARCH 2D, 1889.

[Circular—Superseding that of March 7, 1889.]

INTERSTATE COMMERCE COMMISSION,
Washington, March 23, 1889.

The attention of carriers is called to the act of Congress approved March 2, 1889, entitled "An act to amend 'An act to regulate commerce.'" The Interstate Commerce Commission has caused the interstate commerce law as thus amended to be printed for general distribution, and will furnish copies on application by mail or otherwise.

Section six of the act as it now stands contains the following provisions in respect to joint tariffs:

"No advance shall be made in joint rates, fares, and charges shown upon joint tariffs, except after ten days' notice to the Commission, which shall plainly state the changes proposed to be made in the schedule then in force, and the time when the increased rates, fares, or charges will go into effect. No reduction shall be made in joint rates, fares and charges, except after three days' notice, to be given to the Commission as is above provided in the case of an advance of joint rates. The Commission may make public such proposed advances, or such reductions in such manner as may, in its judgment, be deemed practicable, and may prescribe from time to time the measure of publicity which common carriers shall give to advances or reductions in joint tariffs."

It will be observed that an advance in rates shown upon joint tariffs is forbidden "except after ten days' notice to the Commission," and a reduction in such rates is also forbidden "except after three days' notice to be given to the Commission." The time in each case is to be computed from the day when the notice of advance or reduction reaches the office of the Commission in Washington.

All joint tariffs now filed in the office of the Commission will be understood as remaining in force until due notice of any change is given. When no other tariff is filed the rates on traffic carried over or upon more than one line will be the sum of the local rates of the individual roads, or of local and joint rates, as the case may be.

The Commission has made order that—

"All advances and reductions in joint rates, fares and charges shown upon joint tariff established by common carriers subject to the provisions of the act to regulate commerce shall be made public.

"Every such advance or reduction shall be so published by plainly printing the same in large type, two copies of which shall be posted for the use of the public in two public and conspicuous places in every depot, station or office of such carrier where passengers or freight, respectively, are received for transportation under such schedules, in such form that they shall be accessible to the public and can be conveniently inspected. Such schedules shall be so posted ten days prior to the taking effect of any such advance, and three days prior to the taking effect of any such reduction in joint rates, fares, and charges."

The amendment to the act further provides as follows:

"It shall be unlawful for any common carrier, party to any joint tariff, to charge, demand, collect, or receive from any person or persons a greater or less compensation for the transportation of persons or property, or for any services in connection therewith, between any points as to which a joint rate, fare, or charge is named thereon, than is specified in the schedule filed with the Commission in force at the time."

It is therefore now a criminal offense for any carrier, party to a joint tariff, to participate in the reception of compensation above or below the established rate.

Another provision of the act as amended requires the Commission to execute and enforce the provision of the act, and makes it the duty of any district attorney of the United States, upon the request of the Commission, to institute and prosecute all necessary proceedings for that purpose.

The rule heretofore existing, which requires ten days' public notice of any advance in the rates established by individual carriers, is enlarged by adding the following provision:

"Reductions in such published rates, fares, or charges shall only be made after three days' previous public notice, to be given in the same manner that notice of an advance in rates must be given."

It will be seen that joint tariffs and individual tariffs are now under substantially the same rules. Neither can be reduced without three days' public notice, or advanced without ten days' public notice; and the Commission must also be notified of all contemplated changes; individual and joint tariffs alike must be observed in their integrity.

In reference to the application of these provisions of the law to export traffic, the Commission understands that tariffs now on file in its office, established by carriers accepting merchandise billed or intended for export by sea, are made in compliance

with its order of the date of March 8, 1888, and whether they be individual or joint tariffs the requirement of notice of any change therein is the same as in the case of other tariffs. Imported traffic transported to any place in the United States from a port of entry or place of reception, whether in this country or in an adjacent foreign country, is required to be taken on the inland tariff governing other freights.

By order of the Commission.

EDW. A. MOSELEY,
Secretary.

ORDER OF THE COMMISSION OF MAY 1ST, 1889, RELATIVE TO THE ANNOUNCEMENT OF
CHANGES IN RATES BY TELEGRAPH.

At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 1st day of May, A. D. 1890:

Present: Hon. William R. Morrison, Hon. Augustus Schoonmaker, Hon. Walter L. Bragg, Hon. Wheelock G. Veazey, commissioners.

The following order was adopted by the Interstate Commerce Commission:

Whereas, the act to regulate commerce, amongst other things, provides that "The Commission may make public such proposed advances, or such reductions, in such manner as may, in its judgment, be deemed practicable, and may prescribe from time to time the measure of publicity which common carriers shall give to advances or reductions in joint tariffs," and also authorizes and requires the Commission to execute and enforce the provisions of that statute:

And, whereas, some of the carriers subject to the provisions of that statute, recently, in giving notice to the Commission by telegraph of proposed advances or reductions in joint rates, fares, and charges, sometimes fail to give such notice for the requisite time required by the statute, and in some instances fail to forward to the Commission the printed tariffs evidencing the changes of which notice has been so given by telegram, and sometimes give such brief and indefinite statements in their telegrams relating to the proposed changes by reference to tariffs made by other railroad lines as to be unintelligible, and in other instances fail to state the points at, from, or between which such proposed changes are to be effective;

And, whereas, it is distinctly provided by the sixth section of said statute that it shall be unlawful under the penalties provided by said statute for any carrier subject to its provisions to make any advance in joint rates, fares, or charges, shown upon joint tariffs, except in the manner provided by said statute, namely, in case of an advance of rates that there must be "ten days notice to the Commission which shall plainly state the changes proposed to be made in the schedule then in force, and the time when the increase of rates, fares, or charges will go into effect," and further that "no reduction shall be made in joint rates, fares, and charges except after three days notice to be given to the Commission as is above provided in case of an advance of joint rates;"

Now, therefore, pursuant to said provisions of said statute, the Interstate Commerce Commission hereby orders and gives notice to every carrier subject to the provisions of said statute—

First. That hereafter no notices of advances or reductions by telegraph containing any of the defects or omissions above specified will be recognized or accepted by the Commission as a compliance with the law. Every telegram sent to the Commission by any of said carriers announcing a proposed advance or reduction, as the case may be, must be given to the Commission for the full time in each instance provided by the statute, and must plainly state the changes proposed to be made in any such joint rates, fares, or charges appearing upon any of their printed tariffs in force, and the date when such changes are proposed to be put into effect, the name of the company or line making them, the official designation of the officer sending the telegram, and the telegram in every instance must be immediately followed by a copy of the printed tariff setting forth the changes proposed to be made, forwarded by mail to the auditor of the Interstate Commerce Commission, Washington, D. C., to which printed tariff so sent must be attached a copy of said telegram announcing the changes proposed to be made and set forth in said tariff for the purpose of identifying the same.

Second. It is further ordered by the Commission, pursuant to the provisions of the statute as aforesaid, that any of said carriers giving notice to the Commission by telegraph or otherwise of any proposed advances or reductions in joint rates, fares, and charges shown upon joint tariffs in force, shall, at the same time, post, for the information of the public, at each station upon its line at which such charges are proposed to be made, in two public and conspicuous places, a brief statement plainly setting forth all changes it proposes to make by advance or reduction in joint rates, fares, and charges as shown upon joint tariffs then in force mentioned in its telegram

to the Commission, and the day when the same will go into effect and from and to what points on the line covered by said joint tariffs then in force it is proposed that such advances or reductions shall go into effect, which statement shall bear date the day that it is posted and be signed by the general freight agent or traffic manager or general passenger agent, as the case may be, of every company on whose road said stations are situated, and on the day when said joint tariff as so changed shall go into effect it shall be the duty of the carrier to post two copies of such joint tariff as changed by such advance or reduction in a public and conspicuous place at its depot at each station at which such changes are made as aforesaid, and keep the same so posted, as aforesaid, for public information.

Third. It is further ordered by the Commission, pursuant to the provisions of said statute and the occasional evils resulting from sending telegrams to the Commission by carriers subject to the provisions of the statute in reference to proposed advances and reductions of rates, fares, and charges upon their individual lines, which are not joint rates, fares and charges, and in which telegrams there are sometimes the same defects and omissions as above stated in regard to telegrams sent to the Commission relating to proposed advances and reductions in joint rates, fares, and charges, that so much of this order as declares that the Commission will not recognize or accept as a compliance with law telegrams containing such defects or omissions, shall apply also to cases of rates, fares, and charges made by a single company over its own lines alone, and telegrams in relation to the same must comply in their details and be forwarded to the auditor of the Interstate Commerce Commission, Washington, D. C., in the same manner as telegrams are required to be sent in cases of proposed changes of joint rates, fares, and charges as above set forth.

Fourth. It is further ordered by the Commission that a printed copy of this order be served by the Secretary of the Commission mailing a copy of the same to each of the carriers referred to in this order, properly attested by the seal of the Commission.

A true copy.

EDW. A. MOSELEY,
Secretary.

CIRCULAR OF MAY 24, 1890, CONTAINING CORRESPONDENCE IN THE MATTER OF CHANGING RATE SHEETS WHILE ADVERTISED CHANGES ARE PENDING BUT HAVE NOT GONE INTO EFFECT.

BEFORE THE INTERSTATE COMMERCE COMMISSION.

In the matter of changing rate sheets while advertised changes are pending but have not gone into effect.

[Circular.]

As the question frequently comes up as to the authority of a carrier that has advertised changes in his rates to make further changes before those already advertised have taken effect, the following correspondence is published:

In September, 1889, the auditor of the Commission received from J. E. Galbraith, traffic manager of the International and Great Northern Railroad Company, a letter, of which the following is a copy:

"PALESTINE, TEX., Sept. 25th, 1889.

"C. C. McCAIN, Esq.,

"Auditor, Interstate Commerce Commission, Washington, D. C.:

"DEAR SIR: Referring to our freight tariff No. 50-I. S., applying on cotton, issued September 16th, advances effective September 29th, we wish to make a further advance in some of these rates. Can we lawfully make these advances before the expiration of less than ten days from the time the advances named in the above tariff were effective, provided we give the necessary notice? If we issued that notice on, say, to-day, September 25th, could we lawfully make the second advances in these rates effective on any date between the 5th and 10th of October?

"Yours truly,

"J. E. GALBRAITH,
"Traffic Manager."

Answer was made to this letter, in effect, that the posting and filing of ratesheets establishing rates different from those at the time prevailing did not suspend the power of the carrier to make other changes at any time, and he might do so, provided they were made in conformity with the law; but, in order that they should conform

to the law, the posting and filing should be for the requisite period—that is to say, if the new tariff was an advance upon that then in existence the notice must be for at least ten days; if a reduction, for at least three days.

In August, 1889, the auditor received from G. MacLaine, secretary of the Southern Interstate Association, the following letter:

“ST. LOUIS, MO., August 22, 1889.

“MR. C. C. MCCAIN,

“Auditor, Interstate Commerce Commission, Washington, D. C.:

“DEAR SIR: Will you kindly advise if notices of rates to the public can be withdrawn *at any time* prior to the date of effect, without violation of the interstate commerce law?

“Yours truly,

“G. MACLAINE,
“Secretary.”

This letter was understood to ask substantially the same question as that of Mr. Galbraith, and answer was made to it that the rates could be withdrawn any time prior to the date of their taking effect without a violation of the law, it being assumed in answering that the withdrawal would be in accordance with the method which the law points out for that purpose, viz, by the substitution of a new rate sheet in the place of the one to be withdrawn, the new sheet conforming to the law and being published for the length of time required, according as it was an advance in rates or a reduction.

In March, 1890, the secretary received from Charles S. Fee, general passenger and ticket agent of the Northern Pacific Railroad Company, a letter making inquiry upon this subject, as shown below, to which the following reply was made:

“WASHINGTON, May 21st, 1890.

“CHARLES S. FEE, Esq.,

“G. P. and T. A., &c., St. Paul, Minnesota:

“DEAR SIR: I find on my table, after returning from a long absence from Washington, a letter from you to the secretary of the Commission, making the following inquiry:

“After having posted and filed with you notice of an advance or reduction in rates, can we legally remove this notice from our stations and advise you that the contemplated change would not be made, and thus avoid placing the new rate in effect?”

“A proper answer to this letter demands some consideration of the purpose for which the statute requires that notice of changes in rates shall be given. No one, I presume, knows better than yourself that the power to make sudden changes in the rate sheets of railroad companies, and especially the rates for the transportation of grain, provisions, &c., as it existed before the passage of the interstate commerce law, was one which was subject to the grossest abuses, and that it was sometimes employed for fraudulent purposes; possibly by the agents of railroad companies themselves in some cases, though I trust not often, but certainly by outside parties who had the means of ascertaining contemplated changes before the public was made aware of them.

“Congress thought this a very serious evil, and therefore, in the framing of the interstate commerce law and by amendment thereto, it has undertaken to guard against it. To this end the law requires that in every case an advance in rates shall be publicly notified for ten days. Even in the case of a reduction in rates, which is commonly supposed to be to the advantage of the public, the change is not allowed to become effective until after three days' notification.

“When we consider that changes in the cost of transportation are likely to affect the market value of commodities largely dealt in—sometimes to the full extent of the changes themselves—we shall all agree, I think, that the statutory provisions are wise and just, and that the requirements of the statute ought, not merely because they are law, but in common fairness to the public, to be strictly observed.

“The method of giving notice indicated by the statute is quite as important as the time prescribed. This method is by the posting and filing a new rate sheet that shall plainly state the changes proposed to be made in the schedule of rates to be displaced, and the time when the new rates, fares, and charges will go into effect. Nothing, therefore, is notice of a change in rates that does not contain these requirements. A mere notice that rates will be changed, but not informing the public what the new rates are to be, performs no office under the law.

“Your question is whether, after you have posted and filed a new rate, issued in conformity with the law, and have thus prospectively established new rates, you can not legally remove this notice from your stations, and, by advising the Commis-

sion of your intention to that effect, nullify it altogether, and leave the condition of things as it was before the notification of change was given. On reflection I think you will see that such a method of proceeding would be open to all the objections that were found to exist in the old practice, and might as easily be employed for fraudulent purposes as could the power to make changes without notice, existing before the statute was adopted. You give notice, for example, of a reduction in rates to take effect three days hence. The public at once begins to take action with this notice in view. The price of commodities is at once to some extent increased. If now, after you have allowed this to be before the public for one day, or two days, or anything less than the full statutory requirement, you can then, by a simple exercise of volition, nullify it, you can not fail to see that not only is the purpose of the statute in requiring the notice to be given defeated in the particular case, but that the public is deceived, and very likely to some extent defrauded.

"A conclusive answer to your question is that the statute does not intend that advances or reductions of rates shall be effected in any such way. It contemplates no notice of withdrawal of advertised rates except such as shall be in itself a rate sheet of new rates established to take effect in the place of those which are withdrawn.

"If, therefore, a carrier would establish rates which are an advance upon those which he has already established to go into effect at a day named, but which has not yet arrived, he must do so by a new rate sheet published and to take effect in not less than ten days from the time of posting the same. If he would make a reduction in the rates which he has established to take effect at a future date, he can do so by a rate sheet showing the reductions, published and to take effect not less than three days from the time of publishing the same; complying, of course, in each case, with the requirement that the new rate sheet shall be filed with the Commission. A mere withdrawal of the rate sheet, or notice that it will be withdrawn, can have no legal effect whatever in such a case, because it is not any such proceeding as the law has provided for.

"Very respectfully yours,

"THOMAS M. COOLEY,
"Chairman."

On May 10th, 1890, the auditor received from Charles A. Jewett, acting secretary of the Southern Interstate Association, a letter of which the following is a copy:

"ST. LOUIS, MO., May 8th, 1890.

"C. C. MCCAIN, Esq.,

"Auditor, Interstate Commerce Commission, Washington, D. C.:

"DEAR SIR: Will you kindly favor me at your earliest convenience with a ruling on the following: An advanced rate being issued to-day effective the 23rd, what notice would be necessary in case a lower rate was promulgated three days hence, same being an advance over rate in effect prior to first issue referred to? Would it require ten days, applying to advance in rates, or only three days, applying on reduction?

"Yours truly,

"CHAS. A. JEWETT,
"Acting Secretary."

Reply was made to this letter as follows:

"WASHINGTON, May 21st, 1890.

"CHARLES A. JEWETT, Esq.,

"Acting Secretary, etc., St. Louis, Missouri:

"DEAR SIR:

"Your letter of May 8th, addressed to the auditor of the Commission, is before me. In reply I am directed by the Commission to say that in the case you suppose a ten days' notice is clearly required by the statute. This is very obvious, for what you propose to do is to advance rates which are in force at the time the notice is given, and it is not competent to do this under the statute without giving the full statutory notice of ten days.

"Of course when you speak of giving notice I understand you to refer to the making, posting, and filing of a new tariff.

"Very respectfully yours,

"THOMAS M. COOLEY,
"Chairman."

May 16th, 1890, the Commission received from John G. Taylor, general passenger and ticket agent of the Minneapolis, St. Paul, and Sault Ste. Marie Railway Company, the following telegram:

"MINNEAPOLIS, MINN., May 16th, 1890.

"AUDITOR, INTERSTATE COMMERCE,

"Washington, D. C.:

"Circular No. 16, dated May sixteenth, 1890, taking effect May nineteenth, 1890, canceling circular No. 15, dated May fifteenth, 1890, issued to-day. Printed circular to you by mail to-night.

"JOHN G. TAYLOR."

The reception of this was acknowledged, and afterwards the following letter was sent:

"WASHINGTON, May 21st, 1890.

"JOHN G. TAYLOR, Esq.,

"G. P. and T. A., etc., Minneapolis, Minnesota:

"DEAR SIR: Replying more fully to your telegram of May 16th than was done by the telegraphic response, I desire to call your attention to the fact that, under the statute, the method contemplated whereby a rate sheet is to be canceled after it has been once posted and filed and thus placed before the public as the statute requires, is by substituting in the place thereof another rate sheet covering the ground of the first. The statute does not contemplate the canceling of rate sheets otherwise.

"Precisely what was done by you in the way of canceling the particular circular that you refer to we are not as yet informed, because we have not received the printed circular you say has been sent to us. Possibly in what you have done you may have intended to comply with the statute strictly, and you may have done so in fact.

"This letter is sent to you for the reason that in some instances it has come to the knowledge of the Commission that carriers have supposed they might withdraw rate sheets established by them by mere notice given to that effect, and have assumed, after giving such notice, to act upon the rate sheets previously in existence.

"Very respectfully yours,

"THOMAS M. COOLEY,

"Chairman."

These letters show the views held by the Commission upon the general subject to which they relate. A rate sheet once published and filed as the statute requires must come into effect in accordance with its terms unless it is superseded by some other rate sheet of which due notice is given to the public, and that notice, as above stated, must be given by the posting and filing of a rate sheet to take its place. It may, therefore, happen that a rate sheet notifying a reduction in existing rates may for a time be in force, although previous to its taking effect a new one has been established as a substitution, the new one not having come into effect as soon as the other because the ten days' statutory notice had not expired.

No notice is taken above of the case of a carrier withdrawing a rate sheet with the purpose of going out of the business to which it refers, none of the communications being understood to refer to such a case.

THOMAS M. COOLEY,

Chairman.

By order of the Commission:

EDW. A. MOSELEY,

Secretary.

The following expressions bearing upon the subject of tariffs and classifications, and the duties of carriers in relation thereto, have been collated from letters of the Commission, decisions, and the annual reports:

THE DIFFERENCE BETWEEN JOINT RATES AND COMBINATION RATES DEFINED.

[Letter of Chairman Cooley of May 24, 1890.]

MAY 24, 1890.

DEAR SIR: Auditor McCain has brought to my attention your letter of April 4, 1890, together with accompanying correspondence, which you transmitted to him for the purpose of ascertaining whether the views you had expressed in such cor-

respondence were or were not the correct legal views in respect to the obligations then in question before you.

The questions seem to have been raised by a rate sheet, issued by the St. Louis and San Francisco Railway Company, reducing rates from Chicago to points in the Indian Territory, and also from the same points to Chicago, which rates, by the terms of the rate sheet, were to take effect March 29 last. You say you did not receive a copy of the sheet covering this business, which is your authority for issuing a joint rate sheet, until the date named for it to become effective, and you, to cover the reduction in rates made an allowance for five days' notice, sending a copy of your rate sheet to this office. The question, as I understand it, is at what time the rates fixed by the new rate sheet took effect in fact; whether the companies in your association in making use of the rates thus reduced should treat them as effective from March 29 or only from the day specified by yourself, that is to say, with the allowance of the additional five days' notice after the issuing of your rate sheet. In order to determine a question of this nature it is necessary of course, to refer to the law regarding the making and publication of rate sheets. Referring to that it will be seen that two classes of rate sheets are provided for; first, those which relate to rates made by a carrier upon its own line; and second, those that relate to rates made by a carrier in conjunction with one or more other carriers; the latter being called in the statute, joint rates, fares, and charges. These latter, of course, are only made with the consent of the carriers over whose lines the persons and property are to be carried, for which the joint rates, fares, and charges are made. Now, where rates are exclusively over the line of one company the concurrence of another is, of course, not necessary; but I do not understand that there is anything improper or illegal in any carrier that has established any rates upon its own line giving rates to points upon the lines of other roads, making those rates by the addition of its own legally established rates to those which prevail, and which in the same way are legally established upon the lines of the other road. In other words, a combination of rates made in that manner is perfectly legal, and the publication of the combination by any one of the carriers, although it has not been agreed to between them, might not only be legal but be a great convenience to the public. Now, I do not understand from your letter whether the St. Louis and San Francisco Railway, in the new rate sheet issued by them, assumed to make any change in the rates established by any other company. It is consistent with the rate sheet that all they did was to reduce their own local rates, and then in making rates to and from Chicago to add the prevailing legal rates beyond their own line. If this was all they did, and if they published their own reduced rates legally, they would not seem to have violated any law.

Turning now to your own obligation and duty as joint agent of the Chicago and St. Louis Traffic Association, you are aware, of course, that this association is not a legal entity known to the law as such, it is not a corporation, and as an association it is in no way referred to, recognized, and legalized by the law. It nevertheless, as the Commission thinks, is properly in existence, and is no doubt found by the companies that unite in forming it to be a very great public convenience. It is especially convenient as an agent to put before the public in its territory the rates which prevail therein, as well as the rates which prevail from points therein to other points outside its territory, and the publications which it makes, by the authority of the carriers uniting in the association, appear to be legal if they are made with due regard to time of publication and other requisites. But now, in making a rate to a point outside the territory of the uniting roads upon the line of a road not a member of the association, if the rate is in fact made up only by combination of legally existing rates, the association, or you as its joint agent, or any members of the association, are not under obligation to publish for three days or ten days, according as the rates are reduced or raised, the rate thus given. In other words, such a rate is not a joint rate; it is a mere combination of local rates. The rates combined are supposed to have been legally published, and the combination can be made effective in your territory in making up your own rate sheets from the time when the publication was made on the part of any party that had made the rates with which you combine.

Perhaps this statement is sufficient to cover the question you raise. It would have been much better if the St. Louis and San Francisco Railway had furnished you their tariff in time for you to make publication for the proper time in advance, but I do not see that they were under any legal obligation to do so; neither is it a matter of necessity that the rate thus made up by a combination of the legal rates should be filed in the office of all the roads over which the rates are named; it is for the convenience of the public that it should be so filed, but it is not required by law. The difference between combination rates and joint rates commonly is this, that joint rates are something less than the combination. To make them effective they must not only have the consent of all the roads in interest, but the joint rate sheet must also be posted in all of the offices to bind the roads uniting in making them.

It is very proper, as I think, that joint rates should be made and published through the agency of associations like yours.

The rate sheet you sent here is called upon its face a joint rate sheet; this does not necessarily determine that it is so in fact. Rates made by combination are perhaps most commonly called joint rates, though they are not the joint rates intended by statute. If these rates are joint rates in fact, that is to say, if they are agreed upon by the parties and are something different from a combination of the rates, the publication actually made by the St. Louis and San Francisco Railway, as indicated above, would obviously be insufficient.

The roads for sometime past have been making what they call a "basing rate," which may raise some questions hereafter; but I say nothing of that now, because your letter does not refer to it.

PROPORTIONAL TARIFFS.

The following is a copy of a letter addressed by the chairman of the Commission to an official of one of the freight associations who asks whether a carrier may make and publish a tariff covering proportional rates which are less than the local rates to the same point:

JUNE 22, 1889.

Sometime since you proposed to the Commission a question which you state as follows: "May a railroad company make a tariff which shall show and be only its proportions to be charged to a given point on traffic to further points, the rates in such proportional tariff being less than the local tariff of the same company to the same points." You illustrate the question with particular instances, but it is perhaps not important to repeat them here.

The Commission has repeatedly held that it is not necessary that the proportion a railroad shall consent to receive of a through rate should be the same as its local rate for transportation over an identical line. It is fully impressed that the proper transaction of the business of the country compels the acceptance in a great many cases, and perhaps generally of a less sum as the proportion of a through rate than is charged as a local rate, and that any ruling that the two must be identically the same would be as unfortunate to the commercial interests of the country as it would be to the railroads themselves.

But in the case stated by you, you desire to avoid the making of through rates to the points of ultimate destination, and you hope to get a ruling that a carrier may make two rates covering exactly the same line and no more, which shall differ, the difference depending upon the fact that the freight is to be taken by another carrier in one case, at the point of delivery, and transported to a point beyond, while in the other case it is to be locally delivered.

You are right in saying that the proposed arrangement accomplishes precisely the same purpose as the making of a through rate, and that it saves to the carriers cost and labor which would otherwise be needlessly expended, but the Commission does not see its way how this can be done under the law. The reasons for doubt are numerous, and perhaps it is not necessary to give them here; but I assure you that we have given the subject careful attention, with entire willingness to meet the wishes of the railroad companies if it were possible to do so. But at the very least we think that the point presented is doubtful, and that the companies who should make arrangements of the sort proposed, should understand that the Commission has doubts regarding their legality, and that risks are assumed in making them.

The converse of the arrangement suggested by you has been proposed in other cases, and carriers have assumed to make, over their own lines, a rate less than their local rate upon property that is brought to them by other carriers, though they have no agreed through rate. Here, again, doubtful ground is occupied. The statute contemplates local rates and joint rates, but it intends, as we believe, that joint rates shall be agreed upon, and shall not be left to be made in the manner you suggest, or as they have been made in the cases just alluded to above.

You mention the fact that the Commission has decided that a rate may be made by the addition of the locals. This, we think, is very clear, but in that case there is no reducing of the local to form a through rate not agreed upon as such in advance.

REQUIREMENTS OF THE LAW WITH RESPECT TO THE POSTING OF PASSENGER RATE SHEETS.

[Letter of Chairman Cooley, of April 11, 1891.]

DEAR SIR: Acknowledging your favor of the 9th instant, I have to say that as you state the facts I do not see but that your company, as to the cases to which the statement applies, is acting in entire conformity with the law to regulate commerce, and

meeting its requirements. Lest, however, there may be some deficiency of statement, and to avoid all possible misapprehension, I will give more fully my understanding of what the law requires in regard to the posting of rate sheets.

First. Every carrier subject to the law must post in its office, and keep posted, the rate sheets which show the fares and charges made from and to all stations upon its road, and must file the same with the Commission. This, I understand from your letter, you are careful to do.

Second. If the carrier issues coupon tickets for the transportation of passengers, or gives bills of lading for the transportation of freights over the lines of other carriers, and the fares or rates are made by adding its own fares and rates to those of the carrier or carriers over whose lines the persons or property are to be transported, and which, like its own, have been duly posted and filed, I do not understand that this fact makes it necessary that the carrier should post in its own offices the rate sheets of such other carrier or carriers.

* * * * *

Third. If one carrier unites with one or more others in making a rate which is made by some concession by itself, so that its proportion of a rate is less than its regular rate as published, I understand this to be a joint rate, which all the carriers uniting in it are under obligations to print, post, and file with the Commission and to keep posted in their offices. This is the only way in which the public could be properly informed concerning it. It is not made by the mere addition of rates which individual carriers make and publish, but is something different therefrom, and made by modifying the individual rates, and the notice you send would not in terms or to the common understanding apply to such a rate.

I do not see that your letter applies to such a joint rate at all, and it is possible that you do not unite in making any, though I think this is very unusual for so important a line as your own.

I trust now I have made clear to you what I understand the requirements of the law are in respect to the posting of rate sheets, and if not I shall be pleased to hear from you again. I note with great satisfaction what you say regarding the purpose of the road you represent to comply fully with the requirements of the act in the matter referred to, and I trust the management of your road will not limit this purpose to the mere publication and filing of rate sheets, but will extend it to all of the provisions of the act intended for the regulation of the carriers which are subject to it.

Very respectfully,

T. M. COOLEY,
Chairman.

UNIFORMITY OF TARIFFS AND CLASSIFICATIONS.

But though the carriers make and file their tariffs as required by the act, there is no general uniformity to the tariffs or to the classifications either in form or in general method of preparation. This is unfortunate for several reasons, but especially because the public, who have to deal with many carriers, are likely to be confused between the different methods of giving information, and possibly to be misled in some cases. The difficulty of making use of them for the purposes of the Commission is also greatly enhanced by want of uniformity. * * * (First Annual Report I. C. C., 24.)

CLASSIFICATION.

A classification sheet is put before the public for general information; it is supposed to be expressed in plain terms, so that the ordinary business man can understand it, and in connection with the rate sheets determine for himself what he can be lawfully charged for transportation. (*Hurlburt v. L. S. & M. S. Ry. Co.*, 2 I. C. C. Report, 120.)

COMBINATION RATES UNDER SEPARATE CLASSIFICATIONS.

"It is not at all surprising that the public fail to consult tariffs which confessedly do not give the rate which actually would be charged in a very great number of instances, and which are used in connection with a system of double classification to basing points, and thence to local points in both directions. There would apparently be no use for their doing so, as any information which they might gather from schedules so prepared would be of no practical value." (*In re Tariffs and Classifications of Atlanta and West Point Railroad et al.*, 3 I. C. C. Rep., 19.)

TARIFFS SHOULD STATE CHARGES DEFINITELY.

"The law contemplates the definite establishment of a rate of charges from every point on a line under one management to every other point on the same line, which the ordinary citizen can see for himself and understand without difficulty. It is unnecessary to say that the confusion created or maintained by the carrier for its own purposes can not be used to justify a disobedience of the law. If changes in classification methods are necessary in order to conform to the requirements of the statute, such changes should be made without hesitation. Wherever rates are established less for the longer than the shorter haul, it becomes necessary to give the combination at points near the more distant terminal or basing point. This fact does not make it impossible for the published tariff to show the rates to such points correctly instead of incorrectly. Under such circumstances tariffs may be so constructed that they show a decreasing rate as they approach the more distant terminal." (*In re Tariffs and Classifications of Atlanta and West Point Railroad Company et al.*, 3 I. C. C. Rep., 19.)

AUTHORITY TO MAKE THROUGH RATES.

"The tickets in question necessarily all contemplated continuous trips over the lines of connecting carriers, and were issued as entitling purchasers to transportation accordingly. But in some instances, if not in all, they appear to have been sold without obtaining consent from the connecting lines. Nevertheless purchasers accepted them as contracts according to the terms on which they were sold. The initial carriers thereby assumed in their dealings with the public to have the right to make them, and took the risk of their patrons being imposed upon in case remote carriers should refuse to honor them." (*In re Passenger Tariff and Rate Wars*, 2 I. C. C. Rep., 513.)

Where carriers sell tickets covering continuous trips on connecting lines and purchasers accept them as contracts on the terms on which they are sold the initial carriers thereby assume in their dealings with the public to have the right to make them. Such a contract for joint transportation involves a joint tariff. Interstate commerce cannot be taken out of the provisions of the act by the assumption that the initial carrier issues contracts without authority. There is at least an implied authority and actual authority is shown when the tickets are honored by the connecting lines. Every reduction involves a new joint tariff and the provisions of section 6 of the act to regulate commerce are not complied with unless such a joint tariff is issued and filed with the Commission. (*In re Passenger Tariffs and Rate Wars*, 2 I. C. C. Rep., 513.)

SUPERVISION OF TARIFFS.

The regulation and supervision contemplated by the statute can never efficiently be made until the Commission is in a position to know whether, or not, these tariffs, as filed, show on their face that they seem to comply with the law. * * * (3 I. C. C. Rep., 26.)

COMBINATION RATES UNDER DIFFERENT CLASSIFICATIONS.

It was found by the Commission in an investigation that certain carriers failed to show on their tariffs the rates actually charged to shippers, and that combination rates were made quite different from the rates published on said tariffs, and that different classifications were used at times upon one carrier's road for shipments of the same commodity to neighboring points, and at other times two or more classifications were employed upon the same shipment. (4 I. C. C. Rep., 122.)

CHANGE OF RATES.

The law requires in a notification of a change of rates not merely a notification of an intention to change rates, or even a specification of the principal points, but that every tariff issued by a railroad company should be properly filed, and at the proper time, so that the Commission can see by referring to it precisely what the rates are that the company proposes to exact.

If a carrier would establish rates which are an advance upon those which he has already established to go into effect at a day named, but which has not yet arrived, he must do so by a new-rate sheet published and to take effect in not less than ten days from the time of posting the same. In case of reduction, he must give three days' notice.

Rate sheets changing existing rates should in all cases be filed for the requisite length of time before they are to take effect under the law. Where transmitted by mail and sufficient time is allowed for the sheets to reach the Commission in due course of mail, formal acknowledgment of receipt need not be awaited. (Letters of Chairman Cooley, May 19, 1889, and May 17 and 21, 1890.)

INLAND PROPORTION OF THROUGH FOREIGN RATE.

A fluctuating inland proportion of a through foreign rate, changing daily, perhaps several times a day, is no more permissible under the law than like fluctuations in a purely domestic tariff.

IMPORT RATES.

Reductions and advances are to be notified the same as in any other case, but need not embrace the joint rail and vessel rate. (Letter of Chairman Cooley, June 20, 1889.)

JOINT RATES.

Rates made by merely adding the local rate of initial carrier to rate of connecting carrier, both being at the time duly published, are not in the sense of the law joint rates, and the initial carrier is therefore under no obligation to post a through rate made in that manner. (Letter of Commissioner Schoonmaker, March 25, 1890.)

Railroads uniting in making joint rates should print and post them at the stations on each road. It is immaterial which is the initial road. But where the rate is simply made by the addition of the locals on each road, printing and posting is not required. (Letter of Chairman Cooley, May 1, 1889.)

POSTING OF RATES.

Initial road commonly expected to post joint rates, but all parties to it are responsible for seeing that it is done.

Not necessary to post two separate and distinct kinds of notices of advance or reduction in rates, if the notice is plainly and distinctly conveyed by joint tariffs in which the rate is quoted.

Excursion rates should be filed with the Commission and duly posted. (Letters of Chairman Cooley, March and April, 1889.)

PASSENGER-RATE SHEETS.

Rate sheets should be so that the traveler can ascertain for himself what rate he should pay; and when they fully accomplish this purpose the Commission is not disposed to be captious or technical about forms. (Letter of Chairman Cooley, May 2, 1889.)

Rates for excursion, mileage, and commutation tickets should appear in published and posted tariffs.

Rate sheets issued by associations will be accepted by the Commission upon being satisfied that tariffs so issued are binding upon the members respectively. The tariffs should be so framed as to show what roads unite in making a specified rate. (Letter of Chairman Cooley, December 4, 1888.)

WATER ROUTES.

Water carriers making through rates to any point in conjunction with railroads, issuing or accepting through bills of lading, should file such rates with the Commission, and post in offices. (Letter of Chairman Cooley, April 3, 1889.)

ROUTES TO BE SHOWN ON TARIFFS.

It has been supposed by the Commission that the object of filing and publication of tariffs was to enable the public to know in advance and at any time what rates could be made over any given route without inquiring of anybody. If a shipper after having examined the tariff sheet is required to further ascertain whether it applies to the lines which apparently are able to employ it, it is quite doubtful whether

such tariff is a compliance with the law. It would not seem impossible to have the tariffs show on their face the routes over which the rates named are available. Until this is done the information intended by the statute does not seem to be given. (Letter of Commissioner Walker, December 17, 1888.)

RETROACTIVE NOTICE.

A retroactive notice interpreting a tariff that has been issued, and attempting to give it antecedent effect, is wholly inoperative. (Letter of Commissioner Schoonmaker, January 24, 1889.)

THROUGH RATES.

Information of the making of joint through rates should be filed with the Commission, and all carriers uniting therein should be shown. It is not necessary that the through rate be filed by more than one carrier in the line, though all are under an obligation to see that it is filed. (Letter of Chairman Cooley, December 20, 1888.)

A JOINT TARIFF OF RATES OR CHARGES MUST SHOW ON ITS FACE WHAT CARRIERS UNITE IN ESTABLISHING SUCH JOINT TARIFF.

[Extract from the decision of the Commission in the case of Lehmann, Higginson & Co. v. The Texas and Pacific Rwy. Co., and the Missouri, Kansas and Texas Rwy. Co.]

The Texas and Pacific Railway Company had issued, published, and filed with the Commission tariffs of rates on sugar, of which the following are copies:

[N. O. T. A. 1157.]

JOINT FREIGHT TARIFF.

(A) Illinois Central Railroad.	(E) Queen and Crescent Route.
(B) Louisville and Nashville Railroad.	(F) Texas and Pacific Railway.
(C) Louisville, New Orleans and Texas Ry.	(G) Southern Pacific Co.—Atlantic system and connections.
(D) Mobile and Ohio Railroad.	

Rate of transportation.—Issued February 11, 1889.—Effective February 21, 1889.

From New Orleans, La., to—

Kansas City, Mo.; Atchison, Kans.; Leavenworth, Kans.; St. Joseph, Mo.; Plattsmouth, Nebr.; Nebraska City, Nebr.; Omaha, Nebr.; Council Bluffs, Iowa; Lincoln, Nebr.; Falls City, Nebr.

ON SUGAR.—*In C. L., 24,000 lbs. and over, 30 cents per 100 lbs.*

Rates to stations on the K. C. F. S. and M. R. R. and K. C. C. and S. Ry. will *not* exceed the rate shown above.

Transfers over the Ohio and Mississippi Rivers are included in *above rate*.

The above-named rate will prevail *via* lines above designated by letters A, B, C, D, E, and F only.

Revokes N. O. T. A. 961, corrected, and all other conflicting rates.

D. B. Morey, G. F. A., I. C. R. R., New Orleans, La.	R. X. Ryan, G. F. A., Q. and C. Route, Cincinnati, Ohio.
Theo. Welch, G. F. A., L. and N. R. R., Montgomery, Ala.	E. H. Hinton, G. F. A., T. and P. Ry., Dallas, Tex.
E. W. How, G. F. A., L. N. O. and T. Ry., Memphis, Tenn.	J. G. Schriever, T. M., So. Pac. Co., New Orleans.
H. S. Depew, T. M., M. and O. R. R., St. Louis, Mo.	

For further information apply to—

J. G. Morey, C. A., I. C. R. R.; D. C. Roberts, G. A., L. and N. R. R.; R. F. Reynolds, C. A., L. N. O. and T. Ry.; R. C. Perkins, G. A., M. and O. R. R.; A. F. Barnett, D. F. A., Q. and C. Route; H. C. Reese, C. A., T. and P. Ry.; C. W. Bein, A. G. F. A., So. Pac. Co., New Orleans, La.

*The Texas and Pacific Railway and the Cromwell Pacific Through Line.*TRAFFIC DEPARTMENT, *Dallas, February 26.*

[Supplement No. 16 to J. B., No. 136.]

Please refer to J. B. No. 136 and amend as follows:

* * * * *

Effective, February 21, 1889.—On sugar, in car loads 24,000 pounds and over: Per 100 pounds, 30 cents. N. O. T. A., 1157.

Attach to J. B. 136 and make part of same. Cancels conflicting supplements.

G. H. TURNER, A. G. F. A. E. A. S.

E. H. HINTON, G. F. A (Oliver), Dallas.

Neither the Missouri, Kansas and Texas Railway Company nor the Missouri Pacific Railway Company was a party to the said tariff N. O. T. A. 1157, issued by said Texas and Pacific and other companies February 11, 1889, or to the supplement thereto effective February 21, 1889.

* * * * *

Said association, including the Texas and Pacific Railway Company had published a rate of 30 cents to Kansas City and Missouri River points, and the Missouri, Kansas and Texas Company, by one of its supplemental sheets, dated July 16, 1889, announced the Kansas City rate as extended over its line to Humboldt. The Texas and Pacific refused its assent to such extension, and the Missouri, Kansas and Texas Company on August 5, 1889, canceled its supplement.

At the time of trial the complainants had not been advised of this cancellation, and their counsel, assuming said supplement to be in effect, stated to the Commission that the Kansas City rate having been made applicable to Humboldt the purpose of the complaint had been in the main accomplished, but asked on behalf of complainants an order requiring defendants thereafter to maintain the same rate on sugar to Humboldt as that maintained to Kansas City and to refund excessive charges claimed.

* * * * *

In their brief on behalf of one of the defendants, counsel insist "nothing can be clearer than that in the absence of a joint rate agreed upon by carriers a reasonable rate is the sum of reasonable local rates." This position of counsel that joint tariffs of rates or charges are matters of agreement between carriers is in accordance with the action of both defendants as shown in the publication and cancellation of its supplemental rate-sheet by one on the refusal of the other to join in the rate named in such sheets.

A joint tariff of rates or charges must show on its face what carriers unite in establishing such joint tariff, and for this purpose the words "and connections" are insufficient, if in fact they are effective for any purpose on the rate-sheet N. O. T. A. 1157, naming only initial carriers.

The publication of said "N. O. T. A. 1157 joint freight tariff" by the New Orleans Traffic Association on behalf of the Texas and Pacific and other railway companies, none of them having a line to Missouri River points, and to which "joint freight tariff" neither the Missouri, Kansas and Texas Railway Company nor the Missouri Pacific Railway Company was a party, did not establish as provided by section 6 of the act to regulate commerce a joint tariff of rates and charges on a continuous line from New Orleans to such Missouri River points over the roads of said association or any one of them in connection with any other road or roads over which freight might pass from New Orleans to such points.

* * * * *

No joint tariff of rates or charges having been established in accordance with the statute on the continuous line operated by said several companies, the sum of the local rates was the only rate over said continuous line from New Orleans to Kansas City which had been published and filed in conformity with the statute.

Whatever liability or obligation the Texas and Pacific Company may have incurred as the result of issuing said rate-sheets and shipping and billing sugar through from New Orleans to Kansas City at less than the sum of the local rates of all the companies operating the through line, the local rate, which was 65 cents on that part of the line of the Missouri, Kansas and Texas and 15 cents on that part of the line of the Missouri Pacific over which the sugar passed in its through carriage to Kansas City, was the only rate or charge which had been legally published and filed at which such thorough freight could pass over the lines of these companies respectively.

* * * * *

APPENDIX D.

PETITIONS AND ANSWERS IN CASES BROUGHT BY THE COMMISSION
IN UNITED STATES CIRCUIT COURTS FOR THE
ENFORCEMENT OF ITS ORDERS.

PETITIONS AND ANSWERS IN CASES BROUGHT BY THE COMMISSION IN UNITED STATES CIRCUIT COURTS FOR THE ENFORCEMENT OF ITS ORDERS.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF CALIFORNIA.

In equity.—No. 283.

THE INTERSTATE COMMERCE COMMISSION *vs.* THE ATCHISON, Topeka and Santa Fé Railroad Company, The Atlantic and Pacific Railroad Company, The Burlington and Missouri River Railroad Company, The California Central Railway Company, The California Southern Railroad Company, The Chicago, Kansas and Nebraska Railway Company, The Missouri Pacific Railway Company, The St. Louis and San Francisco Railway Company, The Southern California Railroad Company.

To the Circuit Court of the United States, sitting in equity within and for the district of California :

Your petitioner, The Interstate Commerce Commission, which was created and established and now exists under and by virtue of an act of the Congress of the United States entitled "An act to regulate commerce," approved February 4, 1887, as amended by an act approved March 2, 1889, and as amended by an act approved February 10, 1891, humbly complaining, sheweth unto your honors, that the Atchison, Topeka and Santa Fé Railroad Company is a corporation created, chartered, and existing under and by virtue of the laws of the State of Kansas, having its principal office at the city of Boston, in the State of Massachusetts; that the Atlantic and Pacific Railroad Company is a corporation created, chartered, and existing under and by virtue of the laws of the United States, having its principal office in the city of Boston, in the State of Massachusetts; that the Burlington and Missouri River Railroad Company is a corporation created, chartered, and existing under and by virtue of the laws of the State of Nebraska, having its principal office at the city of Chicago, in the State of Illinois; that the California Central Railway Company is a corporation created, chartered, and existing under and by virtue of the laws of the State of California, having its principal office in the city of Los Angeles, in the State of California; that the California Southern Railroad Company is a corporation created, chartered, and existing under and by virtue of the laws of the State of California, having its principal office at the city of Los Angeles, in the State of California; that the said last two mentioned corporations subsequent to the filing of the petition of the San Bernardino Board of Trade as hereinafter set forth, were consolidated and constituted into a new corporation organized, created, chartered, and existing under and by virtue of the laws of the State of California, as the Southern California Railroad Company, which last-mentioned corporation claims to have some interest in the subject-matter of this suit, having its principal office at Los Angeles aforesaid; that the Chicago, Kansas and Nebraska Railway Company is a corporation created,

chartered, and existing under and by virtue of the laws of the State of Kansas, having its principal office at the city of Topeka, in the State of Kansas; that the Missouri Pacific Railway Company is a corporation created, chartered, and existing under and by virtue of the laws of the States of Kansas, Nebraska, and Missouri, having its principal office at the city of St. Louis, in the State of Missouri; that the St. Louis and San Francisco Railway Company is a corporation created, chartered and existing under and by virtue of the laws of the State of Missouri, having its principal office at the city of St. Louis, in the State of Missouri; and the said railroad corporations except the said Southern California Railroad Company were at the time of the committing of the grievances hereinafter specially mentioned, and all said railroad corporations still are common carriers engaged in the transportation of persons and property by their railroads extending through several of the United States under a common control, management or arrangement for a continuous carriage, and particularly were they then engaged in such business from the Missouri River, St. Louis, in the State of Missouri; Chicago, in the State of Illinois; Cincinnati, in the State of Ohio; Detroit, in the State of Michigan, and New York, in the State of New York, to Los Angeles, in the State of California, and passing through the railroad station of San Bernardino, and as such carriers were during all the time aforesaid and still are subject to all the various provisions of the said act entitled "An act to regulate commerce," and the said amendments thereto.

That the said defendants were heretofore, to wit, on the 22d day of May, 1889, duly impleaded in a controversy not requiring a trial by jury, as provided by the seventh amendment to the Constitution of the United States, before the said Interstate Commerce Commission upon a petition of the San Bernardino Board of Trade, a corporation created, chartered, and existing under and by virtue of the laws of the State of California, for the alleged violation on the part of the said defendants of the provisions of the said act entitled "An act to regulate commerce," as at large and more fully appears by the said petition on file in the office of the said Commission, and a copy whereof is hereunto annexed and made a part of this petition, the same being marked Exhibit A. That thereafterwards, to wit, on the 7th day of June, 1889, said St. Louis and San Francisco Railway Company filed its answer to the above-mentioned petition of the said San Bernardino Board of Trade as at large and more fully appears in and by said answer on file in the office of the said Commission, a copy whereof is hereunto annexed as part of this petition, the same being marked Exhibit B, and on the 12th day of June, 1889, the Chicago, Kansas and Nebraska Railway Company filed its answer to the above-mentioned petition of the said San Bernardino Board of Trade, as at large and more fully appears in and by said answer on file in the office of the said Commission, a copy whereof is hereunto annexed as part of this petition, the same being marked Exhibit C.

And on the 24th day of June the Atchison, Topeka and Santa Fé Railroad Company, the Atlantic and Pacific Railroad Company, the California Central Railway Company, and the California Southern Railroad Company filed their joint answer to the above-mentioned petition of the said San Bernardino Board of Trade as at large and more fully appears in and by said answer on file in the office of the said Commission, a copy whereof is hereunto annexed as part of this petition, the same being marked Exhibit D.

And on the 25th day of June, 1889, the Missouri Pacific Railway Com-

pany filed its answer to the above-mentioned petition of the said San Bernardino Board of Trade, as at large and more fully appears in and by said answer on file in the office of the said Commission, a copy whereof is hereunto annexed as part of this petition, the same being marked Exhibit E.

And on the 12th day of June, 1889, the Burlington and Missouri River Railroad Company of Nebraska filed its demurrer to the above-mentioned petition of the said San Bernardino Board of Trade, as at large and more fully appears in and by said demurrer on file in the office of the said Commission, a copy whereof is hereunto annexed as part of this petition, the same being marked Exhibit F.

That thereafterwards, the said cause being at issue upon the pleadings aforesaid, the said cause duly came on for investigation and hearing before the said Interstate Commerce Commission, duly and legally assembled for that purpose at the city of Washington, in the District of Columbia, on the 4th day of December, 1889, when the said complainant, the San Bernardino Board of Trade, as well as the said defendants, the Atchison, Topeka and Santa Fé Railroad Company; the Atlantic and Pacific Railroad Company; the Burlington and Missouri River Railroad Company; the California Central Railway Company; the California Southern Railroad Company; the Chicago, Kansas and Nebraska Railway Company; the Missouri Pacific Railway Company; the St. Louis and San Francisco Railway Company; and the Southern California Railroad Company, duly appeared by their respective officers and attorneys, and thereupon the said cause proceeded to hearing and determination.

That at the said hearing it was made to appear to the satisfaction of the said Commission that the said defendants had violated the provisions of the said act entitled "An act to regulate commerce," as it was stated to have been violated by them in the said petition hereinbefore referred to as a part hereof, and thereupon said Commission duly and legally determined the matters and things in controversy and at issue between the said parties, and made a report in writing in respect thereto, which included the findings of fact upon which the conclusions of said Commission were based, as at large and more fully appears in and by the report of the determination of the said Commission in regard thereto on file in the office of the said Commission, a copy whereof is hereunto annexed and made a part of this petition, the same being marked Exhibit G.

That thereafterwards and forthwith, upon the determination of the said cause as aforesaid, the said Commission duly formulated an order and notice in relation to the matters and things stated and charged in the said petition based upon the findings and determination of the said Commission with respect thereto, agreeable to the requirements of the statute in such case made and provided, which said order now remains in full force and effect, never having been vacated, set aside, altered, modified, or changed in any respect whatever, and is now on file in the office of the said Commission, a copy whereof is hereunto annexed and made a part of this petition, the same being marked Exhibit H.

That thereafterwards, to wit, on the 12th day of August, 1890, the said Commission, agreeable to the provisions of the law in that regard, duly caused a properly authenticated copy of its said report in respect thereto as aforesaid, together with the order and notice aforesaid, to be delivered to the said defendants.

And thereupon the petition shows that it has not been made to appear to the said Commission that the said defendants have ceased and de-

sisted from the violations of law set forth in the said report and order of the said Commission, but on the contrary thereof the said defendants, unmindful of their duty in that regard and of the decision and determination of the said Commission, as stated in its report as aforesaid, have through their officers, servants, and attorneys wholly disregarded and set at naught the authority and order of the said Commission in that regard, and have willfully and knowingly violated and disobeyed the said order, and have from the time of the issuance and service of the said order and notice as hereinbefore set forth hitherto wholly neglected and refused, and still do neglect and refuse, to comply with the same, in this that the said defendants did not discontinue the greater charges to San Bernardino than to Los Angeles, which were in and by the said order of the said Commission declared unlawful, but have since continued to charge, collect, and receive from shippers and consignees freight rates in excess of the legal rate by the said order prescribed; and the petitioner attaches hereto a petition addressed to it by the said San Bernardino Board of Trade together with accompanying affidavits setting forth the particulars in which the defendants have failed to comply with the said order and report of the said Commission, the same being marked Exhibit I, which is attached hereto as part hereof.

Wherefore the petitioner prays—

1. That a subpoena or other suitable process may issue according to the course of equity, requiring the said Atchison, Topeka and Santa Fé Railroad Company, the said Atlantic and Pacific Railroad Company, the said Burlington and Missouri River Railroad Company, the said California Central Railway Company, the said California Southern Railroad Company, the said Southern California Railroad Company, the said Chicago, Kansas and Nebraska Railway Company, the said Missouri Pacific Railway Company, and the said St. Louis and San Francisco Railway Company to appear at such time and places as this honorable court may determine, then and there to make full, complete, and perfect answers to all the matters and things hereinabove stated and charged as fully and particularly as if the said companies were distinctly and specially interrogated in regard thereto, said answers to be verified by oath.

2. That upon the filing of this petition an order may be passed by this honorable court directing the method of service of notice of the pendency of this proceeding.

3. That such order or orders may be passed pending the cause as will secure a speedy hearing and determination of the matters and things stated and charged in the foregoing petition.

4. That such order or orders may be passed pending the cause as may be necessary for the prosecution of all such inquiries as the court may think needful to enable it to form a just judgment of the matters and things stated and charged in the foregoing petition.

5. That an order may be entered pending the cause granting to the petitioner a writ of injunction or other proper process, mandatory, or otherwise, to restrain the said defendants, their officers, servants, and attorneys from further continuing in their violations of and disobedience to the said order of the said Commission, and that upon final hearing, such injunction may be made perpetual.

6. That a decree may be entered, if it shall seem meet to this honorable court, requiring the said defendants to pay such sum of money, not exceeding the sum of \$500 for every day after a day to be named in said decree that they shall fail to obey the said injunction or other proper process.

7. For such other and further relief in the premises as to the court may seem meet and the equities of the petitioner's cause may require:

THE INTERSTATE COMMERCE COMMISSION,

[L. s.]

By EDW. A. MOSELEY,

The Secretary thereof, thereunto duly authorized.

IN THE CIRCUIT COURT OF THE UNITED STATES, FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

In equity—No. 283.

THE INTERSTATE COMMERCE COMMISSION, *vs.* THE ATCHISON, Topeka and Santa Fé Railroad Company, The Atlantic and Pacific Railroad Company, The Burlington and Missouri River Railroad Company, The California Central Railway Company, The California Southern Railroad Company, The Chicago, Kansas and Nebraska Railway Company, The Missouri Pacific Railway Company, The St. Louis and San Francisco Railway Company, The Southern California Railway Company.

The answer of the Atchison, Topeka and Santa Fé Railroad Company, The Atlantic and Pacific Railroad Company, The Burlington and Missouri River Railroad Company, The California Central Railroad Company, The California Southern Railroad Company, The Missouri Pacific Railway Company, and The Southern California Railway Company, to the bill of complaint or petition of the Interstate Commerce Commission.

These defendants now, and at all times hereafter, saving and reserving unto themselves all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections of the said complainant's said bill of complaint or petition, for answer thereto, or unto so much or such parts thereof as these defendants are advised is or are material or necessary for them to make answer unto, these defendants for answer, say:

I.

In so far as the statements made in the petition by complainants as to the corporate existence of these various companies and the location of their principal places of business the same are hereby submitted.

II.

As to the consolidation of the California Southern Railroad Company and the California Central Railway Company, forming the defendant, the Southern California Railway Company, at the time therein stated, the same is hereby admitted, and in addition to said admission defendants allege that of the corporations consolidated into the Southern California Railway Company, and in addition to the two corporations already named, to wit, the California Southern Railroad Company and the California Central Railway Company, the Redondo Beach Railway Company, being a corporation at that time duly incorporated under the laws of the State of California, and having its principal place of business in

the city of Los Angeles, county of Los Angeles, and State of California, was duly consolidated with said two companies aforesaid under the name and style of Southern California Railway Company; that said Redondo Beach Railway Company, at the time of said consolidation owned and operated a line of road running from the city of Los Angeles and connecting with the said California Central Railway Company in said city of Los Angeles, westerly to Redondo Beach, a point immediately upon the shore of the Pacific Ocean, and that the same is now a part of the Southern California Railway Company, owned and operated by it over the last line aforesaid.

III.

Defendants further admit, that all of said railroad corporations, except the said Southern California Railway Company and its component corporations, were, at the time in said petition mentioned and still are common carriers engaged in the transportation of persons and property by their railroads extending through several of the United States, under a common control, management or arrangement for a continuous carriage, and particularly that they were then engaged in such business from the Missouri River—St. Louis, in the State of Missouri; Chicago, in the State of Illinois; Cincinnati, in the State of Ohio; Detroit, in the State of Michigan, and the city of New York, in the State of New York—to Barstow, in the county of San Bernardino and State of California; but these defendants expressly deny that they are interstate commerce carriers between said station of Barstow and Los Angeles, or through said station of San Bernardino, but on the contrary they affirm and allege that each of said railroad corporations above named carry only from the points east above named to the said station of Barstow, on the line to San Bernardino and Los Angeles, where all goods and merchandise shipped and handled by them as common carriers are turned over and delivered to the Southern California Railway Company.

That said Southern California Railway Company is a corporation duly organized and existing under the laws of the State of California, having its principal place of business in the city of Los Angeles, and neither owns nor operates any line of railroad outside of the State of California, but is wholly within said State, and subject to its jurisdiction.

And defendants admit that all of the defendants herein above appearing, except the Southern California Railway Company and its component companies, the defendants California Central Railway Company and the California Southern Railroad Company, are and were during all of the times in said bill or petition named, carriers subject to the various provisions of an act of Congress entitled "An act to regulate commerce," and amendments thereto; but as to said Southern California Railway Company and its component companies aforesaid, defendants expressly deny that the same was or is subject to the provisions of said act, or any portion thereof, and defendants expressly allege that the same is a local company doing business only as common carrier in the State of California.

IV.

Defendants admit that said defendants other than the Southern California Railway Company were heretofore, to wit, on the 22d day of May, 1889, duly impleaded in a controversy not requiring a trial by jury, before the said Interstate Commerce Commission, upon a petition of the San

Bernardino board of trade, as appears by the said petition Exhibit A to the bill or petition filed in this action, and that the defendant in the said pleading impleading made answers as shown by the different exhibits from B to F inclusive; and that upon such issues and pleadings the cause came on for investigation and hearing before the said Interstate Commerce Commission at the city of Washington, in the District of Columbia, on the 4th day of December, 1889, when said San Bernardino board of trade and said defendants duly appeared by their attorneys, and thereupon said cause proceeded to hearing and determination, but defendants expressly allege that the Southern California Railway Company was not a party to said action, nor was the Redondo Beach Railway Company a part of the consolidation of said Southern California Railway Company such party, nor did it or either of said last named companies have a hearing before said Interstate Commerce Commission upon any of the matters or things alleged in said pleadings, or any of them.

That at the time of the commencement of said proceedings the said Redondo Beach Railway Company was then, and for a long time prior thereto had been, and still is a corporation duly created under the laws of the State of California, engaged in the business of common carrier between the points of Los Angeles and Redondo Beach, on the Pacific Ocean, and that by the consolidation aforesaid it has now been made defendant to this action.

V.

And these defendants admit that the said Commission, on the 19th day of July, 1890, filed its decision in writing, which decision was substantially in words and figures as set forth in Exhibit G to the bill or petition filed in this action, and that thereafter, on the same day, the said Commission duly formulated its order and notice in relation to the matters and things stated and charged in said petition, as shown by Exhibit H attached to the bill or petition filed herein; and defendants admit that said order has not been modified or changed by said Commission since its filing as aforesaid, but for the reasons hereinbefore stated defendants deny that said order is now, or was at the time of the commencement of this action, in full force or effect, or binding or obligatory upon these defendants, or either of them.

VI.

And those defendants deny that a duly or properly authenticated copy of said report or said order was ever delivered to the defendant, Southern California Railway Company, as such, or to the Redondo Beach Railway Company, a corporation consolidated with other companies into the said Southern California Railway Company, but admit that the same was duly delivered to the other defendants answering herein.

VII.

These defendants neither admit nor deny that it has not been made to appear to said Commission that said defendants have ceased and desisted from the violation of law set forth in said report or order of said Commission, and they deny that they have violated any law, either by themselves, their officers, servants, or attorneys, willfully or know-

ingly, and deny that they have wholly neglected or refused, or still neglect or refuse to comply with the order of said Commission, or that they have, since the order of said Commission, continued to charge or collect or receive from shippers or consignees freight rates in excess of any legal rate prescribed by any order; and these defendants neither admit nor deny that a petition addressed to said Commission by said San Bernardino Board of Trade, together with the accompanying affidavits, or any affidavits, as shown by Exhibit I, was filed with or presented to said Commission, but leave plaintiff to the proof of the same.

And these defendants, jointly and severally, neither confessing nor denying any of the matters or things set forth in said bill or petition except as above stated, by way of avoidance and for defense to this action, and as a reason why said order of said Commission should not be enforced, state and show to the court the following facts:

I.

The true and existing state of facts as to ocean competition existing at the time of the filing of said petition by the said San Bernardino Board of Trade and of the answers of the respective defendants therein were not fully proven and established before said Commission as said facts actually existed at the time; but it is true that when said petition was filed and when said answers were made, and when said hearing was had, there did at that time actually exist water competition, such as to take the rates for terminal points upon the Pacific coast, and especially the rate to Los Angeles, out of the control of said Commission and out of the operation of said interstate commerce law as to the making of rates, and that the carrying and transportation of freight such as mentioned in the petition filed before said Interstate Commerce Commission was not under substantially similar circumstances and conditions, but was made wholly dissimilar by reason of such competition then actually existing.

II.

These defendants allege that the determination of said Interstate Commerce Commission was contrary to the evidence produced before it, and was not sustained by such evidence, in this, that the evidence did show a substantial dissimilarity existing between the transportation of freight over the lines of the defendants herein to the city of San Bernardino and to the city of Los Angeles by reason of a substantial and existing competition at that time.

And these defendants further allege that since the making of said order by said Interstate Commerce Commission there has grown up and now exists a new, substantial, and continuous competition by ocean carrying and ocean carriers between all of the points east of the Missouri River named in the pleadings herein and the Pacific ports, including the ports of San Francisco, Redondo Beach, and San Pedro, and that there is now by such ocean transportation being carried large quantities of merchandise and general freight, including the articles specified and named in the petition filed by the said San Bernardino Board of Trade to the ports aforesaid in rivalry with and in competition to the overland carrying by these defendants, and that such competition is actual and present and is increasing in body, quantity, and substance, and that these defendants by reason of such competition have been compelled to make special rates to terminal points upon the Pacific coast, including among that number the city of Los Angeles.

That said Redondo Beach Railway Company, now forming a part of the Southern California Railway Company, by reason of its consolidation aforesaid, creates a continuous line through to the ocean at Redondo Beach, through which point direct from the east and from the shipping points named in said original petition, large quantities of freight are now being consigned and shipped directly to Los Angeles, and to the port of San Francisco by steam and sail vessels, and from thence through said port to Redondo Beach and San Pedro direct to Los Angeles.

III.

These defendants further answering affirm the rates charged upon all classes of freight between the Eastern States heretofore mentioned and San Bernardino are reasonable and just *per se*; and that lesser rates would not be made from similar eastern points to Los Angeles, but owing to the competition by water, both steam and sail, compelling these defendants to make such lesser rates or abandon the business to the water carriers, which competitors are not subject to nor controlled by the interstate commerce law as to the making of rates.

IV.

These defendants further answering say the rates of freight received for the transportation of freight to Los Angeles, San Diego, and San Francisco and other points known as California terminal points are far below the average rates received upon that class of traffic; that defendants' lines are not receiving more than a reasonable return for the transportation performed to San Bernardino, and that because these defendants are forced by the above-mentioned water competition to accept a lesser amount for the carriage to said California terminal points is not a good or valid reason why these defendants should carry to intermediate points at proportionate or equal rates, the circumstances and conditions attending one class of business being entirely dissimilar from those attending the other class of freight traffic referred to.

V.

Defendants further answering state that there are now four transcontinental lines of railroad from the East to the Pacific Ocean other than that formed by these defendants, or any of them, to wit:

The Southern Pacific Railroad Company operating its line of road from the city of San Francisco to Galveston, Tex., and other points east, running through the city of Los Angeles and passing to the south of San Bernardino and thence to the east.

The transcontinental line, composed of the Central Pacific and Union Pacific Railroad Companies, operating a line between San Francisco, in the State of California, to Omaha, in the State of Nebraska, and thence connecting with the other roads to the Eastern markets.

The Northern Pacific Railroad Company operating a line between Portland, Oregon, and Duluth, Minn., and other points east.

The Canadian Pacific Railroad Company operating a line through the British Possessions from ocean to ocean.

That all of said roads other than that formed by those defendants are engaged as common carriers in the transportation of freight from all of the points named in the petition or bill filed herein in the East to the Pacific Ocean, and thence down the Pacific coast, both by water

and by rail, to Los Angeles, from which point distribution is made to other points inland and to the East.

That Los Angeles over all of said lines is an intermediate, although recognized as a terminal station, and the haul to San Bernardino over either or all of said lines constitutes a longer haul than the haul to Los Angeles; that neither of said companies was mentioned in the complaint filed before the Interstate Commerce Commission, neither was or is either one of them bound by said order, the enforcement of which is sought by this proceeding, and to enforce said order of the Interstate Commerce Commission against those defendants would be to subject them to an undue and unreasonable disadvantage in the carrying of freight by reason of the remaining transcontinental lines not being subjected to the same order and rule and the same charges for transportation to like common points, and that the enforcement of said order would impose additional burdens upon these defendants and upon their traffic, and give to said competing lines of road not subject to the jurisdiction of this court in this action undue advantage in the handling and transportation of through freight, merchandise, and general traffic by giving them additional compensation for transporting such freight from Los Angeles to San Bernardino, which would be denied to these defendants by the enforcing of said order.

Wherefore, having fully answered, these defendants ask that the petition be dismissed, and that they go hence without day.

W. C. HAZELDINE,

A. BRONSON,

*Attorneys for all Defendants, except
Chicago, Kansas and Nebraska Railroad Co.*

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN
DISTRICT OF PENNSYLVANIA.

In equity.—No. 28.

THE INTERSTATE COMMERCE COMMISSION *vs.* THE LEHIGH VALLEY
RAILROAD COMPANY.

*To the Circuit Court of the United States, sitting in equity within and for
the eastern district of Pennsylvania:*

Your petitioner, the Interstate Commerce Commission, which was created and established and now exists under and by virtue of an act of the Congress of the United States entitled "An act to regulate commerce," approved February 4, 1887, as amended by an act approved March 2, 1889, and as amended by an act approved February 10, 1891, humbly complaining, sheweth unto your honors, that the Lehigh Valley Railroad Company is a corporation created, chartered, and existing under and by virtue of the laws of the State of Pennsylvania, having its principal office at Philadelphia, in the said State of Pennsylvania, and that the said railroad company was at the time of the committing of the grievances hereinafter specially mentioned and still is a common carrier engaged in the transportation of persons and property by its railroad, extending through several of the United States by continuous carriage, and particularly was it then engaged in such business from the Lehigh coal region, the Wyoming coal region, and the Mahanoy coal region, in the State of Pennsylvania, to various points in the States of

New Jersey and New York, and as such common carrier was during all the time aforesaid and still is subject to the provisions of the said act entitled "An act to regulate commerce" and said amendments thereto.

That the said defendant was heretofore, to wit, on the 19th day of October, A. D. 1888, duly impleaded in a controversy not requiring a trial by jury as provided by the seventh amendment to the Constitution of the United States, before the said Interstate Commerce Commission, upon the petition of Eckley B. Coxe, Alexander B. Coxe, Henry B. Coxe, and the said Eckley B. Coxe and Alexander B. Coxe, executors of Charles B. Coxe, deceased, then and now trading as copartners under the firm name and style of Coxe Brothers & Co., of Drifton, in the county of Luzerne and State of Pennsylvania, for the alleged violation on the part of the said defendant of the provisions of the said act entitled "An act to regulate commerce," as at large and more fully appears by the said petition on file in the office of the said Commission, and a copy whereof is hereunto annexed and made a part of this petition, the same being marked Exhibit A.

That thereafterwards, to wit, on the 26th day of October, 1888, said petition was amended as by stipulation on file in the office of the said Commission, a copy whereof is hereunto annexed as a part of this petition, the same being marked Exhibit B.

That thereafterwards, on the 18th day of January, 1889, the complainant advised the Commission that certain railroad companies other than the defendant in their said petition named were specially interested in the questions involved therein, as at large and more fully appears in and by their communication of that date, a copy whereof is hereunto annexed and made a part of this petition, the same being marked Exhibit C.

That thereafterwards, to wit, on the 18th day of January, 1889, in view of the statements in said last-named exhibit made and in consideration thereof, the said Commission, at a general session thereof, held at the city of Washington on that day, made an order thereon, as at large and more fully appears in and by the same on file in the office of the said Commission, a copy whereof is hereunto annexed as a part of this petition, the same being marked Exhibit D, which said order of the said Interstate Commerce Commission was thereafterwards duly served upon the different railroad companies therein mentioned, and upon the said Albert Fink, Trunk Line commissioner, but none of the companies mentioned in said order availed themselves of the liberty to appear and join in the defense to said petition, as in and by said order they were permitted to do.

That on the 12th day of November, A. D. 1888, the said Lehigh Valley Railroad Company filed its answer to the above-named petition of the said Coxe Brothers & Co., as at large and more fully appears in and by said answer on file in the office of the said Commission, a copy whereof is hereunto annexed as a part of this petition, the same being marked Exhibit E.

That thereafterwards, the said cause being at issue upon the pleadings aforesaid, duly came on for investigation and hearing before the said Interstate Commerce Commission, duly and legally assembled for that purpose, at the city of Washington, in the District of Columbia, on the 7th day of February, 1889, when the said complainant, the said Coxe Brothers & Co., as well as the said defendant, the Lehigh Valley Railroad Company, duly appeared by their respective officers and attorneys, and thereupon the said cause proceeded to hearing and determination.

That at the said hearing it was made to appear to the satisfaction of the said Commission that the said defendant had violated the provisions of the said act entitled "An act to regulate commerce," in certain respects, as was stated to have been violated by it in the said petition hereinbefore referred to as a part hereof, and thereupon said Commission duly and legally determined the matters and things in controversy and at issue between the said parties, and made a report in writing in respect thereof, which included the findings of fact upon which the conclusions of the said Commission were based, as at large and more fully appears in and by the report of the determination of the said Commission, on file in the office of the said Commission, a copy whereof is hereunto annexed and made a part of this petition, the same being marked Exhibit F.

That thereafterwards and forthwith, upon the determination of the said cause as aforesaid, the said Commission duly formulated an order and notice in relation to the matters and things stated and charged in the said petition based upon the findings and determination of the said Commission with respect thereto, agreeably to the requirements of the statute in such case made and provided, which said order now remains in full force and effect, never having been vacated, set aside, altered, modified or changed in any respect whatever, and is now on file in the office of the said Commission, a copy whereof is hereunto annexed and made a part of this petition, the same being marked Exhibit G.

That thereafterwards, to wit, on the 13th day of March, 1891, the said Commission, agreeably to the provisions of the law in that regard, duly caused a properly authenticated copy of its said report in respect thereto as aforesaid, together with the order and notice aforesaid, to be delivered to the said defendant.

And thereupon the petitioner shows that it has not been made to appear to the said Commission that the said defendant has ceased and desisted from the violations of law set forth in the said report and order of the said Commission, but on the contrary thereof the said defendant, unmindful of its duty and of the decision and determination of the said Commission, as stated in its report as aforesaid, has, through its officers, servants and attorneys, wholly disregarded and set at naught the authority and order of the said Commission in that regard, and has willfully and knowingly violated and disobeyed the said order, and has from the time of the issuance and service of the said order and notice as hereinbefore set forth, hitherto wholly neglected and refused, and still does neglect and refuse to comply with the same, to wit, at Drifton, Eckley, Gowen, Tomhicken, Derringer, Stockton, and Beaver Meadow, in the district and State aforesaid, in this, that the said defendant has not wholly ceased and desisted from charging any greater compensation for the transportation of divers known kinds and sizes of anthracite coal delivered to it by the said Coxe Brothers & Co. and other shippers for carriage from shipping points on its lines of railroad at or near the coal mines and collieries of the said Coxe Brothers & Co. in the mining locality known as the Lehigh anthracite coal region, to wit: From Drifton, Eckley, Gowen, Tomhicken, Derringer, and Stockton, all in the county of Luzerne and State of Pennsylvania, and Beaver Meadow, in the county of Carbon and State of Pennsylvania, to Perth Amboy, in the State of New Jersey, than the following rates of charge per ton of 2,240 pounds of each or either of said divers known kinds and sizes of anthracite coal, that is to say: \$1.50 per said ton on the sizes and kinds known as larger or prepared sizes and also and more specifically known as lump, steamboat, broken, egg, stove, and nut

coal; \$1.25 per said ton on the size or kind known as pea coal; \$1.05 per said ton on the size or kind known as buckweat coal; \$1.05 per said ton on the size or kind of coal known as culm, as the said defendant was in and by the said order of the said Commission directed to cease and desist from charging, but on the contrary thereof has since continued to charge, collect, and receive from the said Coxé Brothers & Co. and other shippers and consignees freight rates in excess of the legal rates by the order prescribed; and the petitioner attaches hereto by way of a specification of some of the particulars in which the said defendant has failed to comply with the said order and report of the said Commission a copy of a verified petition addressed to it by the said Coxé Brothers & Co., together with certain exhibits thereto belonging and thereto attached, marked A1, A2, A3, A4, B1, C1, the same being marked Exhibit H, and is made a part hereof.

Wherefore the petitioner prays—

1. That a subpoena or other suitable process may issue according to the course of equity, requiring the said Lehigh Valley Railroad Company to appear at such time and place as this honorable court may determine, then and there to make full, complete, and perfect answer to all the matters and things hereinabove stated and charged as fully and particularly as if the said company was specifically and specially interrogated in regard thereto without verifying said answer by oath, which said verified answer is hereby specially waived.

2. That upon the filing of this petition an order may be passed by this honorable court directing the method of service of notice of the pendency of this proceeding.

3. That such order or orders may be passed pending the cause as will secure a speedy hearing and determination of the matters and things stated and charged in the foregoing petition.

4. That such order or orders may be passed pending the cause as may be necessary for the prosecution of all such inquiries as the court may think needful to enable it to form a just judgment of the matters and things stated and charged in the foregoing petition.

5. That an order may be entered pending the cause granting to the petitioner a writ of injunction or other proper process, mandatory or otherwise, to restrain the said defendant, its officers, servants, and attorneys, from further continuing in their violations of and disobedience to the said order of the said Commission, and that upon final hearing such injunction may be made perpetual.

6. That a decree may be entered, if it shall seem meet to this honorable court, requiring the said defendant to pay such sum of money, not exceeding the sum of \$500, for every day after a day to be named in said decree that it shall fail to obey the said injunction or other proper process.

7. For such other and further relief in the premises as to the court may seem meet and the equities of the petitioner's cause may require.

THE INTERSTATE COMMERCE COMMISSION,

[L. S.]

By EDW. A. MOSELEY,

The Secretary thereof, thereunto duly authorized.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.—APRIL SESSION, 1891.

In equity.—No. 28.

THE INTERSTATE COMMERCE COMMISSION *vs.* THE LEHIGH VALLEY RAILROAD COMPANY.

Answer of the Lehigh Valley Railroad Company to the petition in the above-entitled proceeding filed by the Interstate Commerce Commission.

To said petition this defendant doth make answer and say:

1. It is true that the defendant is a corporation created, chartered, and existing under and by virtue of the laws of the State of Pennsylvania, having its principal office at Philadelphia, in the said State of Pennsylvania.

2. It is also true that the defendant, at the time specified in the petition filed, was, and that it still is, a common carrier engaged in transportation of persons and property in the State of Pennsylvania under the powers conferred upon it by the Commonwealth of Pennsylvania; and in the State of New Jersey as the lessee of the Easton and Amboy Railroad under the powers conferred upon the latter company by the Commonwealth of New Jersey.

3. It is true that the defendant at said time was, and still is, as owner of its said railroad in Pennsylvania and as lessee of the said railroad belonging to the last-named company, in the State of New Jersey, engaged in the transportation of coal and other articles, *inter alia*, from the Lehigh coal region, the Wyoming coal region, and the Mahanoy coal region, in the State of Pennsylvania, to various points in the States of New Jersey and New York.

4. It is true that as such common carrier the defendant at said time was, and still is, as to such business, subject, so far as the same are legal, to the provisions of the act entitled "An act to regulate commerce," and the amendments thereto.

5. It is true that on the 19th day of October, 1888, the defendant was, as is set forth in said petition, impleaded upon the petition of Eckley B. Coxe, Alexander B. Coxe, and Henry B. Coxe, and said Eckley B. Coxe and Alexander B. Coxe, executors of Charles B. Coxe, deceased, trading as copartners under the firm name and style of Coxe Brothers & Co., of Drifton, in the county of Luzerne, and State of Pennsylvania, for alleged violations by it of the provisions of said act.

6. It is true that on the 26th day of October, 1888, said petition was amended in the way set forth in the petition filed in this cause.

7. Defendant is willing to admit that orders were made by the Commission concerning other railroad companies than the defendant, and that notices were given to said railroad companies in the way and manner in said petition averred. It denies, however, that said averments are in any way material to any matter in which it is interested or has concern.

8. It is true that on the 12th day of November, 1888, the defendant did file its answer to said petition of the said Coxe Brothers & Co., in the office of the said Commission.

9. It is admitted that all copies of papers and proceedings annexed to said petition are correct copies of the originals.

10. It is true that the cause thus set at issue by the said petition of

Coxe Brothers & Co., and by the answer of this defendant, was investigated and heard before the said Interstate Commerce Commission on the days and at the times in the petition in this case set forth, and that this defendant was then represented by counsel.

11. It is true that the said Commission after said hearing and investigation did determine the matters and things in controversy at issue between the said parties, and did make a report in writing in respect thereto, which included the findings of fact upon which the conclusions of the said Commission were based, and that Exhibit F, attached to the petition in this cause, is a copy of said report.

12. It is true that the said Commission did formulate an order and notice, and that Exhibit G, attached to the petition in this cause, is a correct copy of the same.

13. It is true that on the 13th day of March, 1891, the said Commission did cause a properly authenticated copy of its said report, together with said order and notice, to be delivered to this defendant.

14. It is also true that this defendant has not complied with the order so made by said Commission, and that it has not at any time since the making of said order carried anthracite coal from Drifton, Eckley, Gowen, Tomhicken, Derringer, or Stockton, in the county of Luzerne, State of Pennsylvania, nor from Beaver Meadow, in the county of Carbon, State of Pennsylvania, to Perth Amboy, in the State of New Jersey, at a rate of charge per ton of 2,240 pounds of \$1.50 per said ton upon the sizes and kinds known as larger or prepared sizes, and also and more specifically known as lump, steamboat, broken, egg, stove, and nut coal, or of \$1.25 per said ton on the size or kind known as pea coal, or of \$1.05 per said ton on the size or kind known as buckwheat coal, or of \$1.05 per said ton on the size or kind of coal known as culm.

15. It is true that since the making of said order, and also since the service of said notice, this defendant has charged, collected, and received from the said Coxe Brothers & Co., and from other shippers and consignees, freight rates in excess of said rates last specified, to wit, the rates set forth in Exhibit H, attached to the petition in this case.

16. This defendant denies that at the hearing of the issue between it and the said Coxe Brothers & Co., before the Interstate Commerce Commission, it did appear that it had violated any provisions of the act entitled "An act to regulate commerce."

17. This defendant in reply to averments in the petition that it has in divers particulars violated the provisions of said act, denies the truth of the same.

18. This defendant avers that the findings of fact by said Commission, and the conclusions of said Commission based upon said findings, said findings and conclusions being set forth in Exhibit F, were not just or in accordance with fact or law.

19. This defendant avers that the conclusion of the said Commission that the rates charged by it for the transportation of anthracite coal from the coal regions to Perth Amboy were unreasonable and unjust, was erroneous. It avers that the rates by it then charged, and since continued by it to be charged, for transportation were just and reasonable.

20. This defendant avers that all the findings of fact by said Commission which led it to the conclusion that the rates charged by the defendants were unreasonable and unjust, were erroneous and were not in accordance with the evidence nor with the law.

21. This defendant avers that the reasoning upon which the Commission rested its conclusion that the said rates so charged by the defend-

ants were unjust and unreasonable, was fallacious and unsound, and was not reasoning which ought to have influenced said Commission, or ought to have led it to the conclusion at which it arrived.

22. This defendant avers that by its charter it is expressly authorized to charge for its transportation of anthracite coal in the State of Pennsylvania, from any point on its line in said State to any other point in said State, the sum of $1\frac{1}{2}$ cents per ton per mile for tolls, and $1\frac{1}{2}$ cents per ton per mile for transportation. It further avers that the Easton and Amboy Railroad Company, of whose railroad in the State of New Jersey, it is the lessee, is authorized by its charter to carry coal from any point in said State on its line to any other point thereon in said State, at a much larger sum per ton per mile than is allowed to be charged for transportation in Pennsylvania.

It avers that the whole transportation of anthracite coal by it from the coal regions of Pennsylvania to Perth Amboy, in the State of New Jersey, is done by it over its own line in Pennsylvania, and over the line of said lessor company in the State of New Jersey, and that it is authorized by its own charter and by the charter of said corporation lessor to charge for said transportation the rates above stated per ton per mile, which are greatly in excess of the rate per ton charged by it, which were found by the Commission to be unreasonable and unjust.

23. This defendant is advised by counsel, and therefore avers, that the act entitled "An act to regulate commerce" does not authorize the Commission under such circumstances as were presented by the petition and answer filed with it, and by the evidence taken thereunder, to determine or find that rates such as were charged by this defendant were unreasonable and unjust.

24. This defendant is advised by counsel, and therefore avers, that the act entitled "An act to regulate commerce" does not authorize the said Commission to fix the rates of transportation which shall be charged by railroad corporations.

25. This defendant is advised by counsel, and therefore, avers that the said act does not authorize the said Commission to make the order which it made in this cause, set forth in Exhibit G attached to the present petition.

26. This defendant is advised by counsel, and therefore avers, that the said act does not authorize the Commission to condemn as unreasonable and unjust, nor to regulate or fix the rates of transportation charged by common carriers, so long as said rates are uniform and do not improperly discriminate as between shippers.

27. This defendant is advised by counsel, and therefore avers, that said act does not authorize said Commission to condemn as unreasonable and unjust any general rates charged by a common carrier which are uniform and which do not improperly discriminate as between shippers, and which are not greater than the rate allowed to be charged by the charter of said carrier.

28. This defendant is advised by counsel, and therefore avers, that if said act does permit the said Commission to make order such as the one set forth in the petition filed in this cause, that said act is unconstitutional:

(a) Because it illegally interferes with the common-law rights of common carriers.

(b) Because it violates their chartered rights.

(c) Because the power given to Congress by the Constitution of the United States to regulate commerce among the several States does not

include the right to fix and establish rates to be charged by common carriers chartered by the several States.

(d) Because the power last aforesaid can not be delegated by Congress to the discretionary exercise thereof by a commission appointed by executive authority.

29. This defendant avers that no rate of transportation charged by it, which is less than that permitted by its charter, is, or can be held to be, unreasonable and unjust. It avers that the rate so charged by it was legal, and was not unreasonable or unjust, because it was less than was permitted to be charged by the charter under which it operated.

30. This defendant prays that the petition in this case filed may be dismissed for lack of just foundation for relief in fact and in law.

[Seal of L. V. R. R. Co.]

LEHIGH VALLEY RAILROAD COMPANY,
By CHAS. HARTSHORNE,

Vice-President.

Attest:

JNO. R. FANSHAW,
Secretary.

JOHN G. JOHNSON,
Counsel for Defendant.

STATE OF PENNSYLVANIA,
City of Philadelphia, ss.:

Before me, the subscriber, a notary public of the Commonwealth of Pennsylvania, this 17th day of July, 1891, personally appeared Charles Hartshorne, vice-president of the Lehigh Valley Railroad Company, who, being duly affirmed, deposes and says that the facts set forth in the foregoing answer so far as the same are stated of his own knowledge are true, and that so far as said facts are stated upon the information of others they are true to the best of his knowledge and belief.

CHAS. HARTSHORNE.

Affirmed and subscribed before me the day and year above written.
Witness my hand and notarial seal.

[L. S.]

EDWARD Y. HARTSHORNE,
Notary Public.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN
DISTRICT OF GEORGIA.

In equity. No. 390.

THE INTERSTATE COMMERCE COMMISSION *vs.* THE CINCINNATI, NEW Orleans and Texas Pacific Railway Company, The Western and Atlantic Railroad Company, and The Georgia Railroad Company.

To the circuit court of the United States, sitting in equity within and for the northern district of Georgia:

Your petitioner, the Interstate Commerce Commission, which was created and established and now exists under and by virtue of an act of Congress of the United States, entitled "An act to regulate commerce," approved February 4, 1887, as amended by an act approved March 2, 1889, and as amended by an act approved February 10, 1891,

humbly complaining sheweth unto your honors that the Cincinnati, New Orleans and Texas Pacific Railway Company is a corporation created, chartered, and existing under and by virtue of the laws of the State of Ohio, having its principal office at Cincinnati, in the said State of Ohio ; that the Western and Atlantic Railroad Company is a corporation created, chartered, and existing under and by virtue of the laws of the State of Georgia, having its principal office at Atlanta, in the said State of Georgia ; that the Georgia Railroad Company is a corporation created, chartered, and existing under and by virtue of the laws of the State of Georgia, having its principal office at Augusta, in the said State of Georgia ; and that the said defendants were at the time of the committing of the grievances hereinafter specially mentioned, and still are, common carriers, engaged in the transportation of persons and property by their several lines of railroad, under a common control, management, or arrangement for continuous carriage or shipment through several of the United States, and particularly were the said defendants then engaged in the said business from Cincinnati, in the State of Ohio, thence through the intermediate States of Kentucky and Tennessee to Social Circle, Augusta and Atlanta, in the State of Georgia, and as such common carriers were during all the time aforesaid and still are subject to the provisions of the said act, entitled "An act to regulate commerce," and said amendments thereto.

That the said defendants were heretofore, to wit, on the 1st day of October, 1889, duly impleaded in a controversy, not requiring a trial by jury, as provided for in the seventh amendment to the Constitution of the United States, before the said Interstate Commerce Commission, upon the petition of the James and Mayer Buggy Company, a manufacturing corporation chartered and existing under the laws of the State of Ohio, and having its principal office in Cincinnati, in that State, for an alleged violation on the part of the said defendants of the provisions of the said act entitled "An act to regulate commerce," as at large and more fully appears by the said petition on file in the office of the said Commission, and a copy whereof is hereunto annexed and made a part of this petition, the same being marked Exhibit A.

That thereafterwards, to wit, on the 8th day of November, 1889, the Western and Atlantic Railroad Company filed its answer to the said petition, as at large and more fully appears in and by said answer on file in the office of the said Commission, and a copy whereof is hereunto annexed and made a part of this petition, the same being marked Exhibit B.

That thereafterwards, to wit, on the 11th day of November 1889, the Georgia Railroad Company filed its answer to the above-named petition of the said James and Mayer Buggy Company, as at large and more fully appears in and by the said answer on file in the office of the said Commission, and a copy whereof is hereunto annexed and made a part of this petition, the same being marked Exhibit C.

That thereafterwards, to wit, on the 29th day of November, 1889, the said Cincinnati, New Orleans and Texas Pacific Railway Company filed its answer to the said petition, as at large and more fully appears in and by the said answer on file in the office of the said Commission, and a copy whereof is hereunto annexed and made a part of this petition, the same being marked Exhibit D.

That thereafterwards the said cause being at issue upon the pleadings aforesaid, duly came on for investigation and hearing before the said Interstate Commerce Commission, duly and legally assembled for that purpose at the city of Washington, in the District of Columbia, on the

21st day of February, 1890, when an order was duly made in said cause, as at large and more fully appears in and by said order on file in the office of the said Commission, and a copy whereof is hereunto annexed and made a part of this petition, the same being marked Exhibit E.

That thereafterwards, on the 21st day of March, the said cause still being at issue upon the pleadings aforesaid duly came on for investigation and hearing before the said Interstate Commerce Commission, duly and legally assembled for that purpose at the city of Washington, in the District of Columbia, pursuant to the provisions in said order of the 21st day of February, 1890, whereof all the parties had due and sufficient notice, and thereupon such proceedings were had that the said cause was continued from time to time until the 3d day of June, 1890.

And on the said 3d day of June, 1890, the said cause then being still at issue upon the pleadings aforesaid, duly came on for hearing before the said Commission, duly and legally assembled for that purpose at the city of Washington, when the said complainant, the James and Mayer Buggy Company, as well as the said defendants, the Cincinnati, New Orleans and Texas Pacific Railway Company, the Western and Atlantic Railroad Company, and the Georgia Railroad Company, duly appeared, by their respective officers and attorneys, and thereupon the said cause proceeded to hearing and determination.

That at the said hearing it was made to appear to the satisfaction of the said Commission that the said defendant had violated the provisions of the said act, entitled "An act to regulate commerce," in certain respects, as was stated to have been violated by them in the said petition herein referred to as a part hereof, and thereupon, on the 29th day of June, 1891, the said Commission duly and legally determined the matters and things in controversy and at issue between the said parties and made a report in writing in respect thereof, which included the findings of fact upon which the conclusions of the said Commission were based, as at large and more fully appears in and by the report of the determination of the said Commission, on file in the office of the said Commission, and a copy whereof is hereunto annexed and made a part of this petition, the same being marked Exhibit F.

That thereafterwards and forthwith, upon the determination of the said cause as aforesaid, the said Commission duly formulated an order and notice in relation to the matters and things stated and charged in the said petition, based upon the findings and determination of the said Commission with respect thereto, agreeably to the requirements of the statute in such cases made and provided, which said order now remains in full force and effect, never having been vacated, set aside, altered, modified, or changed in any respect whatever, and is now on file in the office of the said Commission, and a copy whereof is hereunto annexed and made a part of this petition, the same being marked Exhibit G.

That thereafterwards, to wit, on the 8th day of July, 1891, the said Commission, agreeably to the provisions of the law in that regard, duly caused a properly authenticated copy of its said report in respect to the matters at issue in said complaint, as aforesaid, together with the order and notice aforesaid, to be delivered to the said defendants, and thereupon the petitioner shows that it has not been made to appear to the said Commission that the Cincinnati, New Orleans, and Texas Pacific Railway Company, the Western and Atlantic Railroad Company and the Georgia Railroad Company have ceased and desisted from the violations of law set forth in the said report and order of the said Commission, but on the contrary thereof the said defendants, unmindful of

their duty and of the decision and determination of the said Commission, as stated in its report aforesaid, have, through their officers, servants, and attorneys, wholly disregarded and set at naught the authority of the said Commission in that regard, and have willfully and knowingly violated and disobeyed the said order, and have from the time of the issuance and service of the said order and notice as hereinbefore set forth hitherto wholly neglected and refused and still do neglect and refuse to comply with the same, to wit, at Social Circle, in the State of Georgia, at Augusta, in the State of Georgia, and at Atlanta, in the State of Georgia, in this that the said defendants have not since the 20th day of July, 1891, desisted from charging or receiving any greater compensation in the aggregate for transportation in less than car loads of buggies, carriages, and other articles classified by them as freight of the first-class for the shorter distance over the line formed by their several railroads from Cincinnati, in the State of Ohio, to Social Circle, in the State of Georgia, than they charge or receive for the transportation of said articles in less than car loads for the longer distance over the same line from Cincinnati aforesaid to Augusta, in the State of Georgia; nor have the said defendants, the Cincinnati, New Orleans and Texas Pacific Railway Company and the Western and Atlantic Railroad Company, from and after the 20th day of July, 1891, wholly ceased and desisted from charging or receiving any greater compensation in the aggregate for the transportation of buggies, carriages, and said other first-class articles in less than car loads from Cincinnati aforesaid to Atlanta, in the State of Georgia, than \$1 per 100 pounds; and the petitioner attaches hereto, by way of a specification of some of the particulars in which the said defendants have failed to comply with the said order and report of the said Commission, an affidavit of C. C. McCain, auditor of the said Commission, showing the rates on the articles mentioned in said order now charged by the said defendants in violation thereof; the said affidavit, being marked Exhibit H, is hereunto attached and made a part of this petition.

Wherefore the petitioner prays:

1. That a subpoena, or other suitable process, may issue according to the course of equity, requiring the Cincinnati, New Orleans and Texas Pacific Railway Company, the Western and Atlantic Railroad Company, and the Georgia Railroad Company, severally to appear at such time and place as this honorable court may determine, then and there, each to make full, complete, and perfect answer to the matters and things hereinabove stated and charged, as fully and particularly as if the said defendants were each specifically and specially interrogated in regard hereto, without verifying said answer by oath, which said verified answer is hereby specially waived.

2. That upon the filing of this petition an order may be passed by this honorable court directing the method of service of notice of the pendency of this proceeding.

3. That such order or orders may be passed pending the cause as will secure a speedy hearing and determination of the matters and things stated and charged in the foregoing petition.

4. That such order or orders may be passed pending the cause as may be necessary for the prosecution of all such inquiries as the court may think needful to enable it to form a just judgment of the matters and things stated and charged in the foregoing petition.

5. That an order may be entered pending the cause granting to the petitioner a writ of injunction or other proper process, mandatory or otherwise, to restrain the said defendants, their officers, servants, and

attorneys, from further continuing in their violations of and disobedience to the said order of the said Commission, and that upon final hearing such injunction may be made perpetual.

6. That a decree may be entered, if it shall seem meet to this honorable court, requiring the said defendants each to pay such sum of money, not exceeding the sum of \$500, for every day after a day to be named in said decree that they or any of them shall fail to obey the said injunction or other proper process.

7. For such other and further relief in the premises as to the court may seem meet and the equities of the petitioner's cause may require.

[L. S.] THE INTERSTATE COMMERCE COMMISSION,
By EDW. A. MOSELEY,
The Secretary thereof, thereunto duly authorized.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN
DISTRICT OF GEORGIA.

In Equity—No. 390.

INTERSTATE COMMERCE COMMISSION *vs.* THE CINCINNATI, NEW
Orleans and Texas Pacific Railway Company, The Western and At-
lantic Railroad Company, and The Georgia Railroad Company.

For the defense to the above petition, and as cause why the prayer should not be granted, the Western and Atlantic Railroad Company says:

That on the 27th of December, 1890, it became a body corporate, under the name and style of the Western and Atlantic Railroad Company, under an act of the legislature of Georgia approved November 12, 1889, which provided for the lease of certain property of the State of Georgia known as the Western and Atlantic Railroad, and that prior to said 27th day of December, 1890, this respondent was not in existence, and therefore had no notice of the proceedings before the Interstate Commerce Commission in the matter of the petition of James & Mayer Buggy Company, and had no connection with the matters therein complained of.

Wherefore, respondent submits that the above-stated petition of the Interstate Commerce Commission should be dismissed, the prayer denied, and this respondent allowed to go hence with its reasonable costs.

J. W. THOMAS,
President.

STATE OF TENNESSEE,
Davidson County:

In person appeared J. W. Thomas, who makes oath that he is president of the Western and Atlantic Railroad Company, and that the facts stated in the above defense are true.

Sworn to and subscribed before me this 9th day of December, 1891.
[SEAL.] J. T. SPAULDING,
Notary Public.

CIRCUIT COURT OF UNITED STATES, NORTHERN DISTRICT OF GEORGIA.

THE INTERSTATE COMMERCE COMMISSION *vs.* THE CINCINNATI, New Orleans and Texas Pacific Railway Company, The Western and Atlantic Railroad Company, and The Georgia Railroad Company.

Answer of the Cincinnati, New Orleans and Texas Pacific Railway Company.

The Cincinnati, New Orleans and Texas Pacific Railway Company for answer herein says:

(1) It admits that it is a corporation under the laws of Ohio, operating as a common carrier of passengers and freight; a railroad extending from Cincinnati, in the State of Ohio, to Chattanooga, in the State of Tennessee, which places are the termini of said railway.

(2) It further admits that the defendant, the Western and Atlantic Railroad Company, is a common carrier from Chattanooga, Tenn., to Atlanta, Ga., and that the defendant, the Georgia Railway Company, is a common carrier from Atlanta, Ga., by way of Social Circle, to Augusta, Ga., and that freight is carried by this respondent and its codefendants from Cincinnati to points herein named without break of bulk. It says that defendants in this case are not under any common control or management.

(3) This defendant admits that the proceedings before and by the Interstate Commerce Commission took place as averred in the petition herein, but this defendant denies that at said hearing before said Interstate Commerce Commission it was made to appear that this defendant had violated the provisions of the act entitled "An act to regulate commerce," in the respects charged in the petition before said Interstate Commerce Commission, and denies that said Commission legally determined the matters and things in controversy and at issue between the parties herein.

(4) This defendant says it admits that said Commission made said report, but says that many of the conclusions of fact found therein are not true, and are not justified by the evidence produced at said hearing, and says that the conclusions of law contained in said report and the interpretation thereby given to the provisions of said act to regulate commerce are not correct, and do not accord with the true constructions of said act.

(5) This defendant admits that said Commission did formulate the order mentioned in this case, and that notice thereof was given to this defendant, but denies that the said order was of any binding or legal effect.

(6) This the defendant admits, that the rate of freight on merchandise of the first class from Cincinnati, Ohio, to Atlanta, Ga., a distance of 474 miles, is \$1.07 per 100 pounds, and that the rate from Cincinnati to Augusta, Ga., a distance of 645 miles, is the same. It says that these rates are made by an agreement between the Georgia Railroad Company, the East Tennessee, Virginia and Georgia Railway Company, the Western and Atlantic Railroad Company and this defendant, and are divided between the companies performing the service according to the proportion which the mileage of each road bears to the whole distance. This defendant further says that the Georgia Railroad Company, which owns the railroad from Atlanta to Augusta, always demands and receives its local rates on business from Cincinnati

to any point between Atlanta and Augusta; so that, as far as this defendant is concerned, there is no rate fixed by agreement on merchandise from Cincinnati to Social Circle or other local points on said Georgia Railroad Company's road; but the first-class rate from Cincinnati to Atlanta, being \$1.07 per 100 pounds, and the first-class rate of the Georgia Railroad Company from Atlanta to Social Circle, being 30 cents per 100 pounds, as fixed by the railroad commission of Georgia, the addition of these two rates constitutes the first-class rate of \$1.37 per 100 pounds from Cincinnati to Social Circle; thus, while there is no rate between Cincinnati and Social Circle fixed by agreement, yet there does exist by reason of the said rate from Cincinnati to Atlanta, and by reason of the rate from Atlanta to Social Circle, a total rate of \$1.37 per 100 pounds from Cincinnati. This defendant says that the above-mentioned rates are reasonable and proper, and that they in no respect violate the act to regulate commerce, and that, although the total rate from Cincinnati to Social Circle is greater than it is to Augusta, Ga., a more distant point on the same line, nevertheless this defendant says there are and have been circumstances and conditions justifying a less rate to Augusta than to Social Circle.

(7) This defendant further says that it makes and has made no rate whatever to Social Circle, and that on shipments to Social Circle the only compensation received by this defendant is a proportion, according to its mileage, between Cincinnati and Chattanooga of the rate from Cincinnati to Atlanta.

And having fully answered, this defendant asks to be hence dismissed, with its costs.

EDWARD COLSTON, *Cincinnati, Ohio,*

CALHOUN, KING & SPALDING, *Atlanta, Ga.*

Attorneys for defendant, the Cincinnati, New Orleans

and Texas Pacific Railway Company.

STATE OF OHIO,

Hamilton County:

D. Miller, being by me first duly sworn, says he is traffic manager of defendant, the Cincinnati, New Orleans and Texas Pacific Railway Company, and that the allegations of the foregoing answer are true, as he believes.

D. MILLER.

Sworn to before me and subscribed in my presence this 19th day of December, A. D. 1891.

CHARLES M. CIST,

Notary Public, Hamilton County, Ohio.

The joint and several answer of the Louisville and Nashville Railroad Company and the Central Railroad and Banking Company of Georgia, who are sued by the name of the "Georgia Railroad Company," to the petition filed by the Interstate Commerce Commission in the circuit court of the United States, sitting in equity, for the northern district of Georgia, against the Cincinnati, New Orleans and Texas Pacific Railway Company, the Western and Atlantic Railroad Company, and these respondents, sued by the name of the Georgia Railroad Company.

I.

Respondents suppose it to be true that the Cincinnati, New Orleans and Texas Pacific Railway Company is a corporation created, chartered,

and is existing under and by virtue of the laws of the State of Ohio, and that it has its principal office at Cincinnati, Ohio.

II.

Respondents admit that the defendant, the Western and Atlantic Railroad Company, is a corporation created, chartered, and existing under and by virtue of the laws of the State of Georgia, and that it has its principal office at Atlanta, in said State.

III.

"The Georgia Railroad and Banking Company" is a corporation created, chartered, and existing under and by virtue of the laws of the State of Georgia, and has its principal office at Augusta, in said State.

Said company is the owner of what is known as the "Georgia Railroad," and on May 7, 1881, said company leased said railroad to William Wadley for ninety-nine years, from April 1, 1881.

Respondents are jointly the assignee of the said original lessee, and they operate said railroad under the adopted name of the "Georgia Railroad Company," but there is no such corporation as the "Georgia Railroad Company."

IV.

Respondents admit that they, as assignees of said lease, and the said Cincinnati, New Orleans and Texas Pacific Railway Company, and a certain corporation then existing which was known as the Western and Atlantic Railroad Company, were, at the time of the committing of the acts wrongfully called grievances in the petition, common carriers, severally engaged in the transportation of persons and property by their said several lines of railroad from Cincinnati, in the State of Ohio, thence through the intermediate States of Kentucky and Tennessee to Atlanta, Social Circle, and Augusta, in the State of Georgia. They had an arrangement or agreement between them for the continuous carriage or shipment of through freight from Cincinnati to Augusta, at certain agreed through rates, but they were under no common control or management.

The charter of the corporation which then existed under the name of the Western and Atlantic Railroad Company expired by its own limitations on December 27, 1890, and the defendant now known as the Western and Atlantic Railroad Company is totally distinct from the former company, which bore the same name.

V.

Respondents deny that the defendants were "duly impleaded" in any kind of a controversy before the Interstate Commerce Commission, though it is true that, some time in October, 1889, the James & Mayer Buggy Company, styling itself a manufacturing corporation, claiming to have been chartered under the laws of the State of Ohio and claiming to have its principal office in Cincinnati, in said State, filed a petition before said Commission, a copy of which petition is filed as Exhibit A to the petition in said case.

It will be seen that the said James & Mayer Buggy Company made no complaint except as to certain rates charged them on vehicles from

Cincinnati, Ohio, to Atlanta and Social Circle, Ga.; and that the only complaint they made as to those rates was, that they were higher than the rate to Augusta, Ga.

VI.

Respondents suppose it to be true that the old Western and Atlantic Railroad Company, whose charter expired December 27, 1890, filed its answer to said petition, and that Exhibit B to the petition in this case is a copy of said answer.

VII.

It is true that an answer was filed in the name of the Georgia Railroad Company to said petition, and Exhibit C to the petition in this case is a copy of said answer. Respondents here adopt the allegations of said answer as a part of this answer.

VIII.

Respondents suppose it to be true that the Cincinnati, New Orleans and Texas Pacific Railway Company filed its answer to said petition, and that Exhibit D to the petition in the case is a copy of said answer.

IX.

Respondents suppose it to be true that said Interstate Commerce Commission, on the 21st day of February, 1890, made an order, and that Exhibit E to the petition is a copy of said order.

Respondents were furnished with a copy of said order some time between the 21st day of February and the 21st day of March, 1890.

X.

Respondents have no knowledge, information, or belief as to whether said proceedings were continued from time to time until June 3, 1890; nor as to whether the said James & Mayer Buggy Company, or said Cincinnati, New Orleans and Texas Pacific Railway Company, or the old Western and Atlantic Railroad Company, or either of them, appeared by their respective officers or attorneys before said Commission on June 3, 1890. No officer or attorney of the Georgia Railroad Company or of these respondents appeared on that occasion.

XI.

Respondents deny that it appeared to said Commission that respondents had violated, in any respect, the provisions of the act of Congress entitled, "An act to regulate commerce."

Respondents deny that said Commission duly or legally determined the matters or things in controversy between said parties.

Respondents suppose it to be true that said Commission on or about June 29, 1891, made a report in writing in respect thereof, and that Exhibit F to the petition is a copy of said report. A copy of said report was furnished to respondents some time prior to July 3, 1891.

XII.

Respondents suppose it to be true that said Commission formulated an order or notice in relation to the matters and things stated and charged in said petition. But respondents deny that said order was duly made, or that it was made agreeably to the requirements of the statute in such cases made and provided, or that it now remains in force or effect. Respondents suppose that it has never been vacated, set aside, altered, modified, or changed in any respect by said Commission; they suppose that it is now on file in the office of said Commission; and they suppose that exhibit G to the petition is a copy of said order. Respondents were furnished with a copy of said order on or about July 3, 1891. The charter of the old Western and Atlantic Railroad Company having expired before said order was made, and the proceedings not having been revived, said order was void as to said company; and being joint in its nature, said order was also void as to respondents.

XIII.

Respondents suppose it to be true that the Cincinnati, New Orleans and Texas Pacific Railway Company, and the defendant now known as the Western and Atlantic Railroad Company, have not ceased or desisted from the acts wrongfully called violation of law, and set forth in said report and order of said Commission.

So far as these respondents are concerned, they will state that on July 3, 1891, E. R. Dorsey, general freight agent of said Georgia Railroad Company, issued a circular to its connections, earnestly requesting them that thereafter, in issuing bills of lading to local stations on said Georgia railroad, no rates be inserted east of Atlanta, except to Athens, Gainesville, Washington, Milledgeville, Augusta or points beyond. Neither before nor since the date of said circular have these respondents operating said Georgia Railroad been in any way parties to such through rates, if any, as may have been quoted, from Cincinnati or other western points to any of the strictly local stations on said Georgia Railroad. The stations excepted in said circular are not strictly local stations. Both before and since the date of said circular respondents have received at Atlanta east-bound freight destined to strictly local stations on the Georgia Railroad, and have charged full local rates to such stations; said rates being such as they were authorized to charge by the Georgia Railroad Commission. Said rates are reasonably low, and are charged to all persons alike, without discrimination. A true copy of said circular is here filed as Schedule I to this answer.

XIV.

Respondents deny that they or either of them have been unmindful of their duty, or of any legal decision or determination of said Commission; or that they have through their officers, servants or attorneys, or otherwise, disregarded, or set at naught, the lawful authority of said Commission; or that they have willfully or knowingly, or at all, violated or disobeyed any lawful order of said Commission; or that they have neglected or refused to comply with any lawful order of said Commission at Social Circle, Augusta, or Atlanta, Ga., or elsewhere. As to what the Cincinnati, New Orleans and Texas Pacific Railway Company may have done, or failed to do, respondents have no knowledge or information except as hereinafter stated.

XV.

Respondents are informed and believe that since July 20, 1891, the Cincinnati, New Orleans and Texas Pacific Railway Company continued to receive at Cincinnati, Ohio, for transportation, buggies and carriages in less than carloads, and other articles classified as first-class freight, consigned to Social Circle and other strictly local stations on the Georgia Railroad; that said Cincinnati, New Orleans and Texas Pacific Railway Company issues its own bills of lading at Cincinnati for such articles, and guarantees to shipper that the total rate from Cincinnati to said strictly local stations shall not exceed \$1.07 per 100 pounds from Cincinnati to Atlanta, plus respondents' local rates, whatever they may be to such strictly local stations.

The through rate of \$1.07 from Cincinnati to Atlanta is made by agreement and arrangement between said Cincinnati, New Orleans and Texas Pacific Railway Company and the defendant, now known as the Western and Atlantic Railroad Company; and it is not higher than the rate charged by other lines of transportation which compete with those lines for business between Cincinnati and Atlanta. The Georgia Railroad does not compete for business between Cincinnati and Atlanta, and therefore it is not consulted in regard to the through rates made between those points. It has no voice in making them, and does not participate in their division.

Respondent is bound by law to furnish copies of the local tariffs of the Georgia Railroad to anyone who may desire them, and the Cincinnati, New Orleans and Texas Pacific Railway Company, with one of those tariffs in its possession, can readily ascertain what are the local rates to any of the strictly local stations on the Georgia Railroad; and by adding such rates to \$1.07 (the through rate from Cincinnati to Atlanta), it can easily see what will be the total rate from Cincinnati to each of said strictly local stations, and can safely guarantee a total rate accordingly.

Respondent can not possibly prevent the Cincinnati, New Orleans and Texas Pacific Railway Company, or any other railway company, from guaranteeing total rates, which are in part based upon the local rates of the Georgia Railroad; nor can respondents refuse to carry freight because others may have guaranteed total rates in regard to them. But respondents are no party to any such guaranties, and they charge their full local rates to all strictly local stations, without the least regard to any guaranties that others may or may not have made.

Respondents' local rates on buggies and carriages, in less than carloads, and on other first-class freight from Atlanta to Social Circle (a strictly local station) is 30 cents per 100 pounds, which, added to the through rate of \$1.07 from Cincinnati to Atlanta, makes the total through and local rate \$1.37 per 100 pounds from Cincinnati to Social Circle.

Respondents aver that the through rate of \$1.07 per 100 pounds from Cincinnati to Atlanta is fixed by active competition between various transportation lines, and is reasonably low; the local rate of 30 cents per 100 pounds from Atlanta to Social Circle, is fixed by the Georgia Railroad Commission, and is reasonably low.

Respondent's connection with all such shipments begins for the first time at Atlanta and ends at Social Circle, both of which places are in the State of Georgia. In transporting such shipments from Atlanta to Social Circle, they remain all the time in the State of Georgia, and respondents, therefore, submit that in their connection with such shipments they are not subject to the act of Congress to regulate commerce.

XVI.

It is true that since July 20, 1891, the Cincinnati, New Orleans and Texas Pacific Railway Company has continued to receive at Cincinnati, for transportation, buggies and carriages in less than car loads, and other articles classified as first-class freight, consigned to Augusta, Ga.; that said Cincinnati, New Orleans and Texas Pacific Railway Company issues bills of lading at Cincinnati for such articles and guarantees to shippers that the through rate from Cincinnati to Augusta shall not exceed \$1.07 per 100 pounds.

Said rate of \$1.07 per 100 pounds from Cincinnati to Augusta is made by agreement and arrangement between said Cincinnati, New Orleans and Texas Pacific Railway Company, the defendant, known as the Western and Atlantic Railroad Company and respondents, operating the Georgia Railroad; and said rate is forced upon them by other transportation lines which can compete with them by carrying similar freights from Cincinnati to Augusta, and by other transportation lines which do compete by carrying similar freights to Augusta, from Baltimore, Md., and other Eastern cities.

At Baltimore and other Eastern cities there exist large manufactories of buggies, carriages, and other vehicles, which, with other articles classified as first-class freight, are carried from Baltimore and other Eastern cities at such rates that, if the Cincinnati, New Orleans and Texas Pacific Railway Company, the defendants, now known as the Western and Atlantic Railroad Company, and respondents operating the Georgia Railroad, were to charge more than \$1.07 per 100 pounds from Cincinnati to Augusta, no freight of that character would be shipped from Cincinnati to Augusta over the Georgia Railroad; and Baltimore and other Eastern cities would drive Cincinnati and other Western cities out of the Augusta market.

Respondents aver that there are various transportation lines which compete for business between Baltimore and other Eastern cities on the one side and Augusta on the other side. Some of those lines are all rail, some of them are all water, and some of them are part water and part rail lines. The competition thus produced by those lines makes the rate to Augusta from Baltimore and other Eastern cities as low as it is; and the lines operating from Cincinnati and other Western cities through Georgia to Augusta are forced to meet or approximate the rate from Baltimore and other Eastern cities to Augusta or retire from all that kind of business.

Respondents are advised and insist that it was not the intention of the act to regulate commerce to destroy the commerce between Cincinnati and Augusta; nor to drive Cincinnati and other Western cities out of the Augusta market; nor to give to Baltimore and other Eastern cities a monopoly of that market; nor to deprive the Augusta market of the benefit of competition between Cincinnati and other Western cities on the one side and Baltimore and other Eastern cities on the other side. Respondents are further advised and insist that it was not the intention of said act to prevent the Cincinnati, New Orleans and Texas Pacific Railway Company, the defendant, known as the Western and Atlantic Railroad Company, and respondents operating the Georgia Railroad, from forming a through line from Cincinnati to Augusta, nor from carrying through freights over that line upon such through rates as may be necessary to meet or approximate the rates to Augusta from Baltimore and other Eastern cities.

XVII.

Respondents admit that the distance from Cincinnati to Social Circle is shorter than the distance from Cincinnati to Augusta. They admit that freight carried from Cincinnati to Augusta is carried over the same lines and in the same direction as freight which is carried from Cincinnati to Social Circle. They admit that the aggregate or total of the through rate from Cincinnati to Atlanta, added to the local rate from Atlanta to Social Circle, is greater than the through rate from Cincinnati to Augusta. But respondents aver that freights carried from Cincinnati to Augusta are not carried under substantially similar circumstances and conditions as freight carried from Cincinnati to Social Circle. Social Circle is a strictly local station on the Georgia Railroad. No rival transportation lines reach that point, while at Augusta there exists the competition above referred to; and the fact that competition exists at one point and does not exist at another, creates not only a substantial but a controlling dissimilarity between the circumstances and conditions under which freight is carried to those points respectively.

XVIII.

In the division of the through rate of \$1.07 per 100 pounds from Cincinnati to Augusta, respondents, operating the Georgia Railroad, receive only 28.4 cents per 100 pounds for transportation from Atlanta to Augusta. This is a low rate for the service rendered, but is all that respondents can get. Respondents carry at that rate at a slight profit, and it is to the benefit of the public, as well as of respondents, that respondents should be allowed to retain their source of revenue.

Respondents would much prefer to so increase the through rate from Cincinnati to Augusta that the proportion of it belonging to the Georgia Railroad would amount to 64 cents per 100 pounds, which is the local first-class rate allowed by the Georgia railroad commissioners between Atlanta and Augusta. But it is impossible to get the connections of the Georgia Railroad to allow it any such proportion of said through rate; nor could these connections afford to do so in justice to themselves, considering the relative mileage of the different roads forming the route.

The only way to increase the amount to be realized by the Georgia Railroad from said through rate is to increase said through rate itself, which is impossible so long as water competition exists at Augusta.

If respondents are forced to charge no higher local rates to the strictly local stations on the Georgia Railroad than the proportion which the Georgia Railroad gets of the through rates from Cincinnati and other Ohio River points to Augusta, respondents will be compelled either to retire from such through business or to reduce the local rates to every strictly local station east of Covington, which is east of and distant from Atlanta only 41 miles. To reduce the local rates to all strictly local stations east of Covington from the rates allowed by the Georgia railroad commission to the proportion which that railroad now gets from the through rates from Cincinnati and other Ohio River points to Augusta would reduce respondents' revenue annually not less than \$50,000.

Respondents receive from the through business from Cincinnati and other Ohio River points to Augusta not less than \$123,000 annually. It is therefore manifest that the Georgia Railroad would be forced to abandon the through business. The effect would be to drive Cincin-

nati and other Western cities out of the Augusta market, and to deprive that market of the benefit of the competition now afforded by those cities.

Instead of the James & Mayer Buggy Company getting a rate from Cincinnati to Augusta of \$1.07 per 100 pounds, as it now does, it would have to pay \$1.71 per 100 pounds, while its Baltimore competitors, with their water lines of transportation, would have a rate of about 89 cents per 100 pounds.

Respondents do not believe that the act to regulate commerce was ever intended to destroy it; and such would be the effect as to the commerce involved in this case, if the alleged order of the Interstate Commerce Commission should be enforced by decree in this case.

Having fully answered, respondents pray to be hence dismissed with their reasonable costs.

ED. BAXTER,
JOS. B. CUMMING,
Solicitors for Respondents.

STATE OF GEORGIA,
County of Richmond, ss:

Personally appeared before me, Irwin Alexander, clerk of the circuit court of the United States for the northeast division of the southern district of Georgia, Charles H. Phinizy, who is acting general manager of the Georgia Railroad, who, being duly sworn, deposed the respondents in the foregoing answer are the assignees of the original lessee of said railroad, and that the facts stated in the foregoing answer are true to the best of his knowledge, information, and belief.

C. H. PHINIZY.

Sworn to and subscribed before me this 11th day of December, 1891.
[SEAL.]

IRWIN ALEXANDER,
*Deputy Clerk U. S. Circuit Court,
Northeast Division Southern District, Georgia.*

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA.

In equity.—No. —.

THE INTERSTATE COMMERCE COMMISSION *vs.* THE GEORGIA RAILROAD COMPANY.

To the circuit court of the United States, sitting in equity within and for the northern district of Georgia:

Your petitioner, The Interstate Commerce Commission, which was created and established and now exists under and by virtue of an act of Congress of the United States entitled "An act to regulate commerce," approved February 4, 1887, as amended by an act approved March 2, 1889, and as amended by an act approved February 10, 1891, humbly complaining sheweth unto your honors that the Georgia Railroad Company is a corporation chartered and existing under and by virtue of the laws of the State of Georgia, having its principal office at Augusta, in the State of Georgia; and the said Georgia Railroad Company was, at the time of the committing of the grievances hereinafter spe-

cially set forth, and still is, a common carrier engaged in the transportation of persons and property by its railroad and certain other railroads connecting therewith, extending through several of the United States, under a common control, management, or arrangement for continuous carriage or shipment; and particularly was the said Georgia Railroad Company, heretofore, to wit, on the 5th day of April, 1887, and ever since, engaged in such business from Cincinnati, in the State of Ohio, to Charleston, in the State of South Carolina, and from Philadelphia, in the State of Pennsylvania, to Atlanta, in the State of Georgia; and from divers others places without the State of Georgia to divers other places within the said State of Georgia; and as such carrier was, during all the time aforesaid and still is, subject to all the various provisions of said act entitled "An act to regulate commerce" and the said amendments thereto.

That the said defendant was, heretofore, to wit, on the 6th day of July, 1887, duly impleaded in a controversy not requiring a trial by jury, as provided by the seventh amendment of the Constitution of the United States, before the said Interstate Commerce Commission, upon the complaint of W. H. Heard, then and now a citizen of the United States and a resident of the city of Philadelphia, in the State of Pennsylvania, for an alleged violation on the part of the said defendant of the provisions of the said act entitled "An act to regulate commerce," as at large more fully appears by the said petition on file in the office of said Commission, a copy whereof is hereunto annexed and made a part of this petition, the same being marked Exhibit A.

That thereafterwards, to wit, on the 4th day of August, 1887, the said Georgia Railroad Company filed its demurrer, plea, and answer to the above mentioned petition of the said W. H. Heard, as at large more fully appears in and by said answer on file in the office of the said Commission, a copy whereof is hereunto annexed as part of this petition, the same being marked Exhibit B.

That thereafterwards, the said cause being at issue upon the pleadings aforesaid, duly came on for investigation and hearing before the said Interstate Commerce Commission, duly and legally assembled for that purpose, in the city of Washington, in the District of Columbia, on the 15th day of December, 1887, when the said complainant, the said W. H. Heard, as well as the said defendant, the Georgia Railroad Company, duly appeared by their respective officers and attorneys, and thereupon the said cause proceeded to hearing and determination.

That at the said hearing it was made to appear to the satisfaction of the said Commission that the said defendant had violated the provisions of the said act entitled "An act to regulate commerce," as it was stated to have been violated by it in the said petition hereinbefore referred to as a part hereof, and thereupon said Commission, upon the 15th day of February, 1888, duly and legally determined the matters and things in controversy and at issue between the said parties, and made a report in writing in respect thereto, which included the findings of fact upon which the conclusions of said Commission were based, as at large and more fully appears in and by the report of the determination of the said Commission in regard thereto, on file in the office of the said Commission, a copy whereof is hereunto annexed and made a part of this petition, the same being marked Exhibit C.

That thereafterwards and forthwith, to wit, on the said 15th day of February, 1888, upon the determination of the said cause as aforesaid, the said Commission duly formulated an order and notice in relation to the matters and things stated and charged in the said petition, based

upon the findings and determination of the said Commission with respect thereto, agreeably to the requirements of the statute in such case made and provided, which said order now remains in full force and effect, never having been vacated, set aside, altered, modified, or changed in any respect whatever, and is now on file in the office of the said Commission, a copy whereof is hereunto annexed and made a part of this petition, the same being marked Exhibit D.

That thereafterwards, to wit, on the 23d day of February, 1888, the said Commission, agreeably to the provisions of the law in that regard, duly caused a properly authenticated copy of its said report in respect thereto as aforesaid, together with the order and notice aforesaid, to be delivered to the said defendant.

And thereupon the petitioner shows that it has not been made to appear to the said Commission that the said defendant has ceased and desisted from the violations of law set forth in the said report and order of the said Commission, but on the contrary thereof the said defendant, unmindful of its duty in that regard and of the decision and determination of the said Commission, as stated in the report aforesaid, has, through its officers, servants, and attorneys, wholly disregarded and set at naught the authority and order of the said Commission in that regard, and has willfully and knowingly violated and disobeyed the said order, and has from the time of the issuance and service of the said order and notice, as hereinbefore set forth, hitherto wholly neglected and refused and still does neglect and refuse to comply with the same, in this that the said defendant did not cease and desist from subjecting colored passengers to undue and unreasonable prejudice and disadvantage, and also in that having had since the promulgation of the order aforesaid a rule in regard to the transportation of passengers over its line of road separating the colored passengers from the white passengers, it has not furnished to all passengers carried by it from points without the State of Georgia to points within the State of Georgia, paying the same fare, cars in all respects equal, and provided with the same comforts and accommodation and protection for such travelers, but on the contrary has maintained a rule during all the time aforesaid, to wit, from thence hitherto, under which it has furnished to colored passengers, paying the same fare, cars which were not provided with the same comforts and accommodation and protection which during the same time were furnished to white passengers.

And the said Interstate Commerce Commission further shows that the said defendant was heretofore, to wit, on the 9th day of February, 1889, also duly impleaded in another controversy, not requiring a trial by jury as provided by the seventh amendment to the Constitution of the United States, before the said Interstate Commerce Commission, upon another petition of him, the said W. H. Heard, a citizen of the United States, then residing at Philadelphia, in the State of Pennsylvania, for another alleged violation on the part of the said defendant of the provisions of the said act entitled "An act to regulate commerce," as at large and more fully appears by the said last-mentioned petition on file in the office of the said Commission, a copy whereof is hereunto annexed and made a part of this petition, the same being marked Exhibit E.

That thereafterwards, to wit, on the 5th day of March, 1889, the said Georgia Railroad Company filed its answer to the last above-mentioned petition of the said W. H. Heard, as at large and more fully appears in and by the said answer on file in the office of the said Commis-

sion, a copy whereof is hereunto annexed as a part of this petition, the same being marked Exhibit F.

That thereafterwards, the said last-mentioned complaint being at issue upon the pleadings last aforesaid, the same duly came on for investigation and hearing before the said Interstate Commerce Commission, duly and legally assembled for that purpose at the city of Washington, in the District of Columbia, on the 10th day of April, 1889, when said complainant, the said W. H. Heard, and the said defendant, the said Georgia Railroad Company, again duly appeared by their respective officers and attorneys, and thereupon the said last-mentioned complaint proceeded to a hearing and determination.

That at the said last-mentioned hearing it was made to appear to the satisfaction of the said Commission that the said defendant had violated in certain respects the provisions of the said act entitled "An act to regulate commerce," as it was stated to have been violated by it in the said last-mentioned petition hereinbefore referred to as a part hereof, and thereupon said Commission upon the 8th day of May, 1889, duly and legally determined the matters and things in controversy and at issue between the said parties in that regard, and made a report in writing in respect thereto, which included the findings of fact upon which the conclusions of said Commission were based, as at large and more fully appears in and by the report of the determination of the said Commission in regard thereto, on file in the office of the said Commission, a copy whereof is hereunto annexed and made a part of this petition, the same being marked Exhibit G.

That thereafterwards, to wit, on the 9th day of May, 1889, upon the determination of the said last-mentioned cause as aforesaid, the said Commission duly formulated an order and notice in relation to the matters and things stated and charged in the said last-mentioned petition based upon the findings and determination of the said Commission with respect thereto, agreeably to the requirements of the statute in such case made and provided, which said last-mentioned order now remains in full force and effect, never having been vacated, set aside, altered, modified, or changed in any respect whatever, and is now on file in the office of the said Commission, a copy whereof is hereunto annexed and made a part of this petition, the same being marked Exhibit H.

That afterwards, to wit, on the 10th day of May, 1889, the said Commission, agreeably to the provisions of the law in that regard, duly caused a properly authenticated copy of its said last-mentioned report in respect thereto, as aforesaid, together with the order and notice aforesaid, to be delivered to the said defendant.

And thereupon the petitioner shows that it has not been made to appear to the said Commission that the said defendant has ceased and desisted from the violations of law set forth in the said last-mentioned report and order of the said Commission, but on the contrary thereof the said defendant unmindful of its duty in that regard and of the decision and determination of the said Commission, as stated in its last-mentioned report as aforesaid, has, through its officers, servants, and attorneys wholly disregarded and set at naught the authority and order of the said Commission in that regard, and has willfully and knowingly violated and disobeyed the said order and notice as hereinbefore set forth and has hitherto wholly neglected and refused, and still does neglect and refuse, to comply with the same, in this that the said defendant did not cease and desist without further delay from subjecting colored passengers to undue and unreasonable prejudice and disadvan-

tage, and also in that having had since the promulgation of the last-mentioned order aforesaid, a rule in regard to the transportation of passengers over its line of road separating the colored passengers from white passengers, it has not furnished to all passengers carried by it from points without the State of Georgia to points within the State of Georgia, paying the same fare, cars in all respects equal and provided with the same comforts and accommodations for such travelers, nor has the said defendant furnished the equal protection required by law to him, the said W. H. Heard, or persons of his race and color engaged in interstate travel as passengers upon its passenger trains, the same as it furnishes to passengers who are of the white race, against disorderly conduct on the part of other passengers and other persons, but, on the contrary, have maintained a rule during all the time aforesaid, to wit, from thence to hitherto, under which it has furnished to such colored passengers paying the same fare, cars which were not provided with the same comforts and accommodation which during the same time were furnished to white passengers; and also during all the time last aforesaid it has not furnished the equal protection required by law to him, the said W. H. Heard, or to other persons of his race and color engaged in interstate travel as passengers upon its passenger trains, but has permitted the said Heard and such other persons to be subjected to abuse, inconvenience, and discomfort by reason of the disorderly conduct on the part of other passengers, as well as of the employés of the said defendant and other persons.

And the said Interstate Commerce Commission further shows that the two said several orders of the said Interstate Commerce Commission above set forth have been continuously violated, disobeyed, and set at naught from the time of their promulgation aforesaid until the present time, to wit, at the different stations on the line of its said road in the northern district of Georgia aforesaid and within the jurisdiction of this honorable court.

Wherefore the petitioner prays—

1. That a subpoena or other suitable process may issue according to the course of equity, requiring the said Georgia Railroad Company to appear at such time and places as this honorable court may determine, then and there to make full, complete, and perfect answer to all the matters and things, hereinabove stated and charged as fully and particularly as if the said company was distinctly and specially interrogated in regard thereto, without verifying said answer by oath, which said verified answer is hereby specially waived.

2. That upon the filing of this petition an order may be passed by this honorable court directing the method of service of notice of the pendency of this proceeding.

3. That such order or orders may be passed pending the cause as will secure a speedy hearing and determination of the matters and things stated and charged in the foregoing petition.

4. That such order or orders may be passed pending the cause as may be necessary for the prosecution of all such inquiries as the court may think needful to enable it to form a just judgment of the matters and things stated and charged in the foregoing petition.

5. That an order may be entered pending the cause granting to the petitioner a writ of injunction or other proper process, mandatory or otherwise, to restrain the said defendant, its officers, servants, and attorneys from further continuing in its violation of and disobedience to the said order of the said Commission, and that upon final hearing such injunction may be made perpetual.

6. That a decree may be entered, if it shall seem meet to this honorable court, requiring the said defendant to pay such sum of money, not exceeding the sum of \$500, for every day after a day to be named in said decree that it shall fail to obey the said injunction or other proper process.

7. For such other and further relief in the premises as to the court may seem meet and the equities of the petitioner's cause may require.

THE INTERSTATE COMMERCE COMMISSION,

[L. S.]

By EDW. A. MOSELEY,

The Secretary thereof, thereunto duly authorized.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN
DISTRICT OF GEORGIA.

In equity.

THE INTERSTATE COMMERCE COMMISSION *vs.* THE GEORGIA RAIL-
road Company.

The Georgia Railroad Company, in pursuance of the order passed in the above-stated case, shows as cause why the prayer of the petition should not be granted as follows, to wit:

I.

This defendant respectfully demurs to said petition and, as cause of said demurrer, says that section 3 of the act to regulate commerce, upon which section the petition is founded, has no application to such facts as are set out in the petition.

II.

Without prejudice to its aforesaid demurrer, this defendant, answering said petition, adopts as a part of this its answer, the answer (with the exhibit thereto), which this respondent made before the Interstate Commerce Commission in the case of William H. Heard *versus* The Georgia Railroad Company, February 28, 1889, which said answer (with the exhibit thereto), is annexed to the petition in this cause as Exhibit F.

Further answering, this defendant says, that the order of the Interstate Commerce Commission, which this present proceeding seeks to enforce, was rendered by said Interstate Commerce Commission under the following circumstances:

The petition and answer, upon which the hearing before said Commission was held, raised no issue, except as to the condition of the car complained of, its appointments, accommodations, and close connection with the smoking car, as will fully appear by reference to Exhibits E and F of the petition in this cause.

Nevertheless the Interstate Commerce Commission, without requiring the pleadings to be amended, and over the objection of this defendant, and without allowing this defendant a postponement to procure testimony upon a question not raised by the pleadings, entered upon the investigation of the conduct of the conductor and white passengers, heard a mass of false testimony which the defendant, if opportunity had been

given it, could have easily refuted before any impartial tribunal, and rendered judgment against the defendant under circumstances abhorrent to judicial methods and traditions. In this connection this defendant refers to the following language on page 13 of Exhibit G of the pending petition, (page 69 of pamphlet), to wit:

We have held that this required us to report and to act upon a violation of the statute, discovered by evidence before us in an investigation, although it had not been the subject of complaint in the petition.

IV.

Wherefore, this defendant denies that it was ever duly impleaded in the controversy upon which the order now sought to be enforced was issued; and denies that it ever had its day in court (if the Interstate Commerce Commission be a court) in said controversy, or that it ever had a fair, just, and impartial hearing in said controversy, according to the universal established usage of the courts of the land.

V.

Finally, this defendant says: It was not at the time of the filing of the petition in this honorable court, and is not now subjecting colored passengers to undue and unreasonable prejudice and disadvantage, in violation of the act to regulate commerce.

That it does now, and did at the time of the filing of the petition, furnish to all passengers paying the same fare, cars substantially equal, and substantially as well provided with comforts and accommodations for travelers;

That it does now furnish, and has ever furnished the equal protection required by law alike to white and colored passengers.

And having fully answered, this defendant prays to be hence dismissed, etc.

JOS. B. CUMMING,
GEORGIA HILLZER,
Defendant's Solicitors.

I, Jos. B. Cumming, counsel for the defendant, the Georgia Railroad Company, do certify that the foregoing demurrer is well founded in law.

JOS. B. CUMMING,
Defendant's Solicitor.

Charles H. Phinizy, being duly sworn, deposes and says that he is the acting general manager of the Georgia Railroad Company, and that the foregoing demurrer of said company is not interposed for delay.

C. H. PHINIZY.

Sworn to and subscribed before me this 26th day of December, 1891.

IRWIN ALEXANDER,
Deputy Clerk U. S. Circuit Court, Southern District, Georgia.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MICHIGAN.

In equity, No. —.

THE INTERSTATE COMMERCE COMMISSION *vs.* THE DETROIT, GRAND Haven and Milwaukee Railway Company.*To the circuit court of the United States sitting in equity within and for the western district of Michigan:*

Your petitioner, the Interstate Commerce Commission, which was created and established and now exists under and by virtue of an act of the Congress of the United States entitled "An act to regulate commerce," approved February 4, 1887, as amended by an act approved March 2, 1889, and as amended by an act approved February 10, 1891, humbly complaining sheweth unto your honors, that the Detroit, Grand Haven and Milwaukee Railway Company is a corporation, created, chartered, and existing under and by virtue of the laws of the State of Michigan, and was at the time of the committing of the grievances hereinafter specially mentioned, and still is a common carrier engaged in the transportation of persons and property partly by railroad and partly by water, under a common control, management or arrangement for a continuous carriage or shipment by its railroad and line of steamboats, extending through several of the United States and particularly was it then engaged in such business between the cities of Detroit and Grand Haven, in said State of Michigan, to and from the city of Milwaukee, in the State of Wisconsin; that its line of transportation, as above stated, then formed and still forms a continuous line to and from said cities of Detroit, Grand Haven, and Milwaukee, as well as between and through the various stations of its said line, including the cities of Grand Rapids and Ionia, in the said State of Michigan, and as such common carrier was during all the time aforesaid and still is subject to the said act entitled "An act to regulate commerce," and the amendments thereto.

That the said defendant was heretofore, to wit, on the 24th day of September, A. D. 1888, duly impleaded in a controversy not requiring a trial by jury as provided by the seventh amendment to the Constitution of the United States, before the said Interstate Commerce Commission upon the petition of Mary O. Stone and Thomas Carten, partners, then doing business under the firm name and style of Stone & Carten, and then and now residing at the city of Ionia aforesaid, for the alleged violation on the part of the said defendant of the provisions of the said act entitled "An act to regulate commerce," as at large and more fully appears in and by the said petition on file in the office of the said Commission, a copy whereof is hereunto annexed and made a part of this petition, the same being marked Exhibit A.

That thereafterwards, to wit, on the 8th day of October, 1888, the defendant, the said Detroit, Grand Haven, and Milwaukee Railway Company filed its answer to the above-named petition of the said Stone & Carten, as at large and more fully appears in and by said answer on file in the office of the said Commission, a copy whereof is hereunto annexed as a part of this petition, the same being marked Exhibit B.

That thereafterwards, the said cause being at issue upon the pleadings aforesaid, duly came on for investigation and hearing before the said Interstate Commerce Commission, duly and legally assembled for

that purpose, at the city of Washington, in the District of Columbia, on the 29th day of January, 1889, when the said complainants the said Stone & Carten, as well as the said defendant the Detroit, Grand Haven and Milwaukee Railway Company, duly appeared by their respective officers and attorneys and thereupon the said cause proceeded to hearing and determination.

That at the said hearing it was made to appear to the satisfaction of the said Commission that the said defendant had violated the provisions of the said act, entitled "An act to regulate commerce," in certain respects, as was stated to have been violated by it in the said petition hereinbefore referred to as a part hereof, and thereupon, on the 26th day of April, 1890, said Commission duly and legally determined the matters and things in controversy and at issue between the said parties, and made a report in writing in respect thereof, which included the findings of fact upon which the conclusions of the said Commission were based, as at large and more fully appears in and by the report of the determination of the said Commission, on file in the office of the said Commission, a copy whereof is hereunto annexed and made a part of this petition, the same being marked Exhibit C.

That thereafterwards, to wit, on the 12th day of May, 1890, upon the determination of the said cause as aforesaid, the said Commission duly formulated an order and notice in relation to the matters and things stated and charged in the said petition based upon the findings and determinations of the said Commission with respect thereto, agreeably to the requirements of the statute in such case made and provided, which said order now remains in full force and effect, never having been vacated, set aside, altered, modified, or changed in any respect whatever, and is now on file in the office of the said Commission, a copy whereof is hereunto annexed and made a part of this petition, the same being marked Exhibit D.

That thereafterwards, on the 13th day of May, 1890, the said Commission, agreeably to the provisions of the law in that regard, duly caused a properly authenticated copy of its said report in respect thereto as aforesaid, together with the order and notice aforesaid, to be delivered to the said defendant.

And thereupon the petitioner shows that it has not been made to appear to the said Commission that the said defendant has ceased and desisted from the violations of law set forth in the said report and order of the said Commission, but on the contrary thereof the said defendant, unmindful of its duty and of the decision and determination of the said Commission, as stated in its report as aforesaid, has, through its officers, servants, and attorneys, wholly disregarded and set at naught the authority and order of the said Commission in that regard, and has willfully and knowingly violated and disobeyed the said order, and has from the time of the issuance and service of the said order and notice, as hereinbefore set forth, hitherto wholly neglected and refused, and still does neglect and refuse to comply with the same, to wit, at Grand Rapids and Ionia, in the district and State aforesaid, in this, that the said defendant did not within thirty days from the service of a copy of the report of the said Commission, Exhibit C aforesaid, cease and desist from the violation of law therein found and then consisting of furnishing free cartage to and from its station at Grand Rapids for freight carried on its road, as the said defendant was in and by said order of the said Commission directed to cease and desist from furnishing, but, on the contrary thereof, has, since the expiration of said thirty days,

continued to furnish such free cartage in violation of the order of the Commission as aforesaid.

And the petitioner further shows that soon after the expiration of said thirty days, to wit, on the 9th day of June, 1890, the said defendant forwarded to the said Interstate Commerce Commission, a letter, which is now on file in the office of the said Commission, a copy whereof is hereunto annexed and made a part of this petition, the same being marked Exhibit E.

Wherefore the petitioner prays—

1. That a subpoena or other suitable process may issue according to the course of equity, requiring the said Detroit, Grand Haven and Milwaukee Railway Company to appear at such time and place as this honorable court may determine, then and there to make full, complete, and perfect answer to all the matters and things hereinabove stated and charged as fully and particularly as if the said company was specifically and specially interrogated in regard thereto without verifying said answer by oath, which said verified answer is hereby specially waived.

2. That upon the filing of this petition an order may be passed by this honorable court directing the method of service of notice and the pendency of this proceeding.

3. That such order or orders may be passed pending the cause as will secure a speedy hearing and determination of the matters and things stated and charged in the foregoing petition.

4. That such order or orders may be passed pending the cause as may be necessary for the prosecution of all such inquiries as the court may think needful to enable it to form a just judgment of the matters and things stated and charged in the foregoing petition.

5. That an order may be entered pending the cause granting to the petitioner a writ of injunction or other proper process, mandatory or otherwise, to restrain the said defendant, its officers, servants, and attorneys, from further continuing in their violations of and disobedience to the said order of the said Commission, and that upon final hearing such injunction may be made perpetual.

6. That a decree may be entered, if it shall seem meet to this honorable court, requiring the said defendant to pay such sum of money, not exceeding the sum of \$500, for every day after a day to be named in said decree that it shall fail to obey the said injunction or other proper process.

7. For such other and further relief in the premises as to the court may seem meet and the equities of the petitioner's cause may require.

THE INTERSTATE COMMERCE COMMISSION.

[L. S.]

By EDW. A. MOSELEY.

The Secretary thereof, thereunto duly authorized.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION.

In equity.

THE INTERSTATE COMMERCE COMMISSION *vs.* THE DETROIT, GRAND Haven and Milwaukee Railway Company.

The answer of the Detroit, Grand Haven and Milwaukee Railway Company to the petition of the Interstate Commerce Commission, filed against it in the above-entitled cause.

First. Respondent admits all of the averments of fact contained in said petition, and it also admits the finding of facts embodied in the opinion of the Interstate Commerce Commission attached to and made a part of said petition as Exhibit C, to wit, the findings numbered respectively 1, 2, 3, 4, 5, 6, 7, 9, 10, and 11.

Second. In further answer to said petition respondent says that it has been the practice of railway companies engaged in interstate commerce, not only in the State of Michigan, but throughout the United States, to do free carting as a means of securing traffic at numerous stations on their respective lines of railway for many years past, and long before the passage of the interstate commerce act, and that this practice still continues. It has been and is deemed by respondent and the other railway companies referred to as legitimate as the expense of maintaining commercial agents at exceptional stations to solicit freight and other business for the road. It has also been the practice, which still continues at exceptional stations on the lines of many railroads engaged in interstate commerce business, to build, at large expense, systems of belt railroad, so called, for the purpose of securing business for the main line of railway, and over such belt roads cars, in connection with interstate traffic, are hauled between the main line of road of the company operating it and the places of business adjacent to and near the track of such belt system free of charge to the shipper.

Respondent states, on information and belief, that such belt systems exist and are operated as aforesaid by the Michigan Central Railroad Company, in the State of Michigan, at the following-named places, to wit, at the city of Detroit, the city of Jackson, the city of Lansing, the city of Battle Creek.

Systems of free carting are also carried on extensively by railroad companies in connection with interstate commerce traffic in the following-named cities: The city of Detroit, and city of Chicago in the State of Illinois; the cities of Toledo and Cleveland, in the State of Ohio, and the city of New York; and respondent is informed and believes, and so states the fact to be, that the practice prevails in numerous other cities in the United States, and by many different railway companies engaged in carrying interstate traffic. In all of these instances, in respect of free cartage as in respect of the belt systems of railway and free transportation thereon, the practice prevails only at exceptional stations where the business is of sufficient magnitude to warrant the carrier in incurring the expense, and such expense is deemed to be, in these instances, legitimate as a means of securing traffic for the railroad, and of affording increased facilities and despatch in doing its business.

Third. Respondent further states that on every railroad in the State of Michigan—and it is informed and believes that the same is true on

every railroad in the United States—there are tracks constructed by the railway company, at its own expense, at exceptional stations on the line of road, leading from the main track of the road to private business establishments, which are used solely for delivering and receiving freight in the business between such private business establishments and the railway—much of which is interstate traffic—and without any charge being made by the railway company therefor, while other private business establishments at the same station of the railroad, and at other stations on the same railroad, are not afforded these advantages in connection with such traffic, but are compelled to incur the expense of carting to and from stations.

The practice of the railway companies of the country in this regard has existed almost, if not quite, from the beginning of railroads in this country, and is believed to be fully justified by consideration of business economy, and that it does not infringe any provision of the interstate-commerce law. And yet respondent claims and submits that the practice involves more of the elements of discrimination than does the cartage system at Grand Rapids, here complained of.

Fourth. Respondent's practice of free carting at said city of Grand Rapids was originally adopted and is still continued because it is less expensive to it than would be a change of its line of railroad so as to bring it into closer proximity to the business center of said city or the construction and operation of spur tracks from its main line of road into said business center, where the main-line tracks of its competitors, the Michigan Central and the Detroit, Lansing and Northern Railroad Companies, are laid in said city.

Such free cartage has the additional advantage, wherever it exists, of enabling the carrier to promptly clear the freight buildings of traffic and prevent its burdensome and expensive accumulation, and it secures a method of order in delivering traffic from its buildings. Where the acceptance and removal of freight is left to consignees the tendency of all stations where the traffic is great is for consignees to make a convenience for themselves of the freight buildings of the railway company for storage of their freight, which leads to great embarrassment and expense to the company. And if consignees are left to receive their freight at the station there is no order observed, and in the nature of the business can not be, in their calls for freight. The freight can not be delivered in the order of its reception at the station, and the freight last received into the station is often first called for. To so make delivery always involves a considerable increase of expense to the company.

The practice of delivering to the consignee also saves the expense of sending out to the consignees advice notes of the arrival of freight.

Fifth. Respondent states that the free cartage at said city of Grand Rapids, or the extension of its railroad tracks into the business center of said city, is an absolute condition of respondent's procuring for its road a due and proper, or any considerable, part of the freight traffic of said city; and it avers that the matter in dispute involved in this cause exceeds the sum or value of \$5,000, exclusive of costs.

Sixth. The 2 cents a hundred pounds paid for cartage at said city of Grand Rapids by respondent is not paid alone for the cartage, but includes the services of the cartage agents, acting in behalf of respondents, in soliciting freight traffic for its road and collecting from consignees and consignor all bills for the freight charges of respondent on the traffic carried. The value of these services to the respondent, aside

from the mere matter of carting the freight, is not less than one-third of the sum which respondent pays.

Seventh. Respondent therefore claims and submits that in view of its own interest and the interest of the people of said city of Grand Rapids, and in view of the business relations between said city and the city of Ionia, the free cartage complained of is not an undue or an unreasonable preference or advantage to said city of Grand Rapids or to its merchants or shippers as against said city of Ionia or its merchants or shippers, and particularly as against said Mary O. Stone and Thomas Carten; and that it does not subject said city of Ionia or its merchants or shippers, and particularly said Mary O. Stone and Thomas Carten, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever, within the true meaning and intent of the interstate commerce law, and that it is not in conflict with the long and short haul clause (so called) of said law.

THE DETROIT, GRAND HAVEN AND
MILWAUKEE RAILWAY COMPANY,
By W. J. SPICER,
Its general manager.

E. W. MEDDAUGH,
Solicitor for Respondent.

THE UNITED STATES OF AMERICA,
Western District of Michigan, Southern Division, ss:

I, Charles L. Fitch, clerk of the circuit court of the United States for the western district of Michigan, do hereby certify that the foregoing is a true and compared copy of the answer of the respondent filed in the proceedings of said court in said entitled cause and of the whole thereof.

Witness my official signature and the seal of said court, at Grand Rapids, this 6th day of January, in the year of our Lord, 1892.

[SEAL.]

CHARLES L. FITCH,
Clerk.

By ———, *Deputy.*

APPENDIX E.

UNIFORM BILL OF LADING.

UNIFORM BILL OF LADING

[Not negotiable.]

Contract No. Station 18.

Received from

By .. Company.

The property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned, and destined as indicated below, which said company agrees to carry to the said destination, if on its road, otherwise to deliver to another carrier on the route to said destination.

It is mutually agreed, in consideration of the rate of freight hereinafter named, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions, whether printed or written, herein contained, and which are hereby agreed to by the shipper and by him accepted for himself and his assigns as just and reasonable

CONDITIONS.

1. No carrier or party in possession of all or any of the property herein described shall be liable for any loss thereof or damage thereto by causes beyond its control, or by floods or by fire from any cause or wheresoever occurring; or by riots, strikes, or stoppage of labor; or by leakage, breakage, chafing, loss in weight, changes in weather, heat, frost, wet, or decay; or from any cause if it be necessary or is usual to carry such property upon open cars.

2. No carrier is bound to carry said property by any particular train or vessel, or in time for any particular market, or otherwise than with as reasonable dispatch as its general business will permit. Every carrier shall have the right, in case of necessity, to forward said property by any railroad or route between the point of shipment and the point to which the rate is given.

3. No carrier shall be liable for loss or damage not occurring on its own road or its portion of the through route, nor after said property is ready for delivery to the next carrier or to consignee. The amount of any loss or damage for which any carrier becomes liable shall be computed at the value of the property at the place and time of shipment under this bill of lading, unless a lower value has been agreed upon or is determined by the classification upon which the rate is based, in either of which events such lower value shall be the maximum price to govern such computation. Claims for loss or damage must be made in writing to the agent at point of delivery promptly after arrival of the property, and if delayed for more than thirty days after the delivery of the property, or after due time for the delivery thereof, no carrier hereunder shall be liable in any event. [When subrogation clause is used insert it here.]

4. All property shall be subject to necessary cooperage and baling at owner's cost. Each carrier over whose route cotton is to be carried hereunder shall have the privilege, at its own cost, of compressing the same for greater convenience in handling and forwarding, and shall not be held responsible for unavoidable delays in procuring such compression. Grain in bulk consigned to a point where there is an elevator may (unless otherwise expressly noted herein, and then if it is not promptly unloaded) be there delivered, and placed with other grain of same kind, without respect to ownership, and if so delivered shall be subject to a lien for elevator charges in addition to all other charges hereunder. No carrier shall be liable for differences in weights or for shrinkage of any grain or seed carried in bulk.

5. Property not removed by the person or party entitled to receive it within twenty-four hours after its arrival at destination may be kept in the car, depot, or place of delivery of the carrier, at the sole risk of the owner of said property, or may be, at the option of the carrier, removed and otherwise stored at the owner's risk and cost, and there held subject to lien for all freight and other charges. The delivering carrier may make a reasonable charge per day for the detention of any car and for use of track after the car has been held forty-eight hours for unloading, and may add such charge to all other charges hereunder, and hold said property subject to a lien therefor. Property destined to or taken from a station at which there is no regularly appointed agent shall be entirely at risk of owner when unloaded from cars, or until loaded into cars; and when received from or delivered on private or other sidings, shall be at owner's risk until the cars are attached to, and after they are detached from, trains.

6. No carrier hereunder will carry, or be liable in any way for, any documents, specie, or for any article of extraordinary value, not specifically rated in the published classifications, unless a special agreement to do so, and a stipulated value of the articles, are indorsed hereon.

7. Every party, whether principal or agent, shipping inflammable, explosive, or dangerous goods, without previous full written disclosure to the carrier of their nature, shall be liable for all loss or damage caused thereby, and such goods may be warehoused at owner's risk and expense or destroyed without compensation.

8. Any alteration, addition, or erasure in this bill of lading which shall be made without the special notation hereon of the agent of the carrier issuing this bill of lading shall be void.

9. If the word "order" is written hereon immediately before or after the name of the party to whose order the property is consigned, without any condition or limitation other than the name of a party to be notified of the arrival of the property, the surrender of this bill of lading properly indorsed shall be required before the delivery of the property at destination. If any other than the aforesaid form of consignment is used herein, the said property may, at the option of the carrier, be delivered without requiring the production or surrender of this bill of lading.

10. Owner or consignee shall pay freight at the rate below stated, and all other charges accruing on said property, before delivery, and according to weights as ascertained by any carrier hereunder; and if upon inspection it is ascertained that the articles shipped are not those described in this bill of lading, the freight charges must be paid upon the articles actually shipped, and at the rates and under the rules provided for by published classifications.

11. If all or any part of said property is carried by water over any part of said route, such water carriage shall be performed subject to the

conditions, whether printed or written, contained in this bill of lading, including the condition that no carrier or party shall be liable for any loss or damage resulting from the perils of the lakes, sea, or other waters; or from explosion, bursting of boilers, breakage of shafts, or any latent defect in hull, machinery, or appurtenances; or from collision, stranding, or other accidents of navigation; or from the prolongation of the voyage. And any vessel carrying any or all of the property herein described shall have liberty to call at intermediate ports; to tow and be towed, and to assist vessels in distress, and to deviate for the purpose of saving life or property. And any carrier by water liable on account of loss of or damage to any of said property shall have the full benefit of any insurance that may have been effected upon or on account of said property.

Upon all the conditions, whether printed or written, herein contained, it is mutually agreed that the rate of freight from ——— to ——— is to be, in cents per 100 pounds.

If — times first class.	If first class.	If second class.	If third class.	If fourth class.	If fifth class.	If sixth class.	If special.	
							Class.	Rate.

And advanced charges at ——— ——— \$ ———
100

Marks, consignees, and destination.	Description of articles.	Weight (subject to correction).

_____,
Freight Agent.

[NOTE.—When the subrogation clause is used it should be inserted at the end of Condition 3, as marked in the Bill of Lading printed above, in the following words:

Any carrier or party liable on account of loss of or damage to any of said property shall have the full benefit of any insurance that may have been effected upon or on account of said property.]

APPENDIX F.

CONVENTION OF RAILROAD COMMISSIONERS.

CONVENTION OF RAILROAD COMMISSIONERS.

On the 3d and 4th of March, 1891, the regular annual convention of State commissioners of railroads was held at the rooms of the Interstate Commerce Commission. Commissioners and accredited representatives were present from the following States: Connecticut, Florida, Illinois, Iowa, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Nebraska, New York, North Dakota, Ohio, Pennsylvania, Rhode Island, South Carolina, South Dakota, Vermont, Virginia, and Wisconsin. Several gentlemen representing the executive committee of the Association of American Railway Accounting Officers were also present.

The Hon. Thomas M. Cooley was chosen chairman of the convention, Mr. George G. Crocker, of Massachusetts, vice-chairman, and Messrs. Edward A. Moseley and Martin S. Decker, secretary and assistant secretary, respectively.

On taking the chair, Judge Cooley made the following address:

"Gentlemen of the convention: Our purpose in coming together on this occasion is for consultation upon subjects of mutual interest, and for the discussion of questions which either pertain directly to the official duties we have severally taken upon ourselves, or which at least have some bearing upon the proper performance of those duties. We are not all clothed with the same powers; there has not been prescribed for all of us the like obligations; but in our official action we all have the same general purpose in contemplation, and it may justly be assumed that the views we may severally hold will be of common interest, and that in so far as there has been experience in dealing with practical questions, this experience will be not interesting merely, but of high value.

"It has been assumed by the people in creating the offices which are represented in this meeting that there are mischiefs of some considerable magnitude in the railroad service of the country; and the existence of these mischiefs is the justification for creating such offices. No class of persons in the country will admit more freely the existence of serious evils than those who are managers of the railroads or who are interested as stockholders or bondholders in the results of the management; but as this class look upon the existing evils from the standpoint of corporate interest, they are likely to see them as they exist mostly in the relations between the roads themselves, while the public, regarding them from a different standpoint, naturally see most distinctly the mischiefs which spring from the relations of the railroads to their customers or which affect the political society.

"When the legislation which was intended to bring the transportation business of the country under public control was first entered upon, there were persons interested as managers or otherwise in railroad property, and possibly some others, who denied that any such legislation was fairly warranted by just principles of constitutional law. This denial is not often heard now, but it is very generally conceded that, inasmuch as the railway is a public agency, its management is a public trust; and that as such it is as legitimately to be regulated by law as

is the management of any other trust in which the public are directly concerned. There are doubtless still some persons, however, who believe that in point of policy public regulation was uncalled for at the time it was entered upon, and that the results will not justify the expectations upon which the legislation hitherto adopted has been based. This last proposition I do not see that this convention need care to controvert. It is likely to be the case with all attempts at important reforms in public affairs that the results will not equal the antecedent expectations; and one of the consequences must be that those who are officially connected with the effort will be compelled to share among them, to some extent, the blame that inevitably follows the impossibility of giving complete satisfaction to extravagant hopes.

"Whether the views of those who have not favored public regulation of railways are or are not justified by the situation, or by the prospects for the future, it seems to be taken for granted now that statutes for the purpose are likely to have a place among the laws for an indefinite period; though to what extent they shall go in regulation, and how far they may justly and properly subordinate the interests of stockholders and bondholders to the rights and convenience of the general public, are questions upon which the differences of opinion are not likely to be reconciled, and may be expected to be hereafter, as they are now, somewhat radical. There are many who believe that the Government should not regulate merely, but should manage the roads; that its hand should be felt continuously and everywhere; while others look upon the existing legislation as having gone quite as far as can be justified by the expectation of useful results. Others, holding views differing from both these classes might be mentioned, but it is not important; the future alone, after much more practical experience than the country has had as yet, will determine which of them, if indeed any, are right in their anticipations and prophecies. For our present purpose it is sufficient for us to say, that it is agreed on all hands by those who undertake to deal with the subject of railway regulation, that there are many evils here which ought to be remedied; and whoever speaks of these evils is likely in general terms to talk of a 'railroad problem' to be solved: those interested in the roads for the reason already mentioned appearing to look for it mainly in the relations between the roads themselves, while others regard it as existing somewhere in the defective performance by the roads of their public duties, and therefore, perhaps, to be solved through the exercise of such governmental power as shall compel proper performance.

"It is a noticeable fact that when this railroad problem is spoken of the mention is likely to be vague and indefinite, whether it is receiving attention at the hands of those representing the roads or from those who speak in the interests of political economy, or as representing the public authorities. If a legal discussion is being had, however narrow may be the point involved, the parties are not unlikely to make use of this phrase, "railroad problem," as if a decision upon the matter then in controversy was to solve the problem, or at least was to dispose of some portion or lead up to some final solution. This same phrase may be used in the very next controversy, though equally narrow but quite different, and the same expectation of the result may seem to be in the minds of those who represent the contestants. When, however, public authorities are making use of a phrase which pertains to their official duties, and which to the mind of the hearer may seem to indicate their understanding of what their jurisdiction is, in part or in whole, it is important that they employ the phrase with some degree of exacti-

tude; and perhaps no better use can be made of the opening hour of our meeting than to devote it to an endeavor to ascertain precisely what it is that is meant by the 'railroad problem,' not merely when it is used by ourselves, but also when it is used by those who are connected directly with railroad management. In doing this, however, we shall be under the necessity of going beyond the terms employed in the several acts of legislation under which we are acting, for in none of them is this phrase defined; the laws point out the scope of our duties, and it is easy to see that many of these are of minor importance and stand by themselves, so that they can not be considered with reason as constituting a part of any great problem; while the evils at which others are aimed may possibly be traced to a common source, and the correction of one through the proper treatment of that common source may be a correction of the others also. Certainly nothing can fairly be dignified with the appellation of 'railroad problem' which does not concern the foundation cause or causes of the principal evils which in the railroad service beget injury or annoyance and excite complaint.

"In an attempt to ascertain what the railroad problem (treating the designation in the sense indicated) must be held to be, it may be well at first to point out what it is not; and this I shall now proceed to do.

"It is certainly not to be found in the legislation authorizing the building of railroads, or in that which prescribes the terms and conditions under which the building shall be carried on and completed. It is unfortunate no doubt that the laws for this purpose are so wanting in homogeneity, and in provisions for the protection against the mischiefs with which the exercise of such important powers, when they may be assumed by anyone at discretion, are likely to be attended. The authority comes in the main from the legislation of the States and Territories; and if we examine these we shall find that apparently the most important object in the minds of the lawmakers in granting charters of incorporation for railroads, or in passing general laws which shall stand in the place of such charters, has been to invite and secure the construction; to invite capitalists, or others who can secure capital by whatever means for the purpose, to expend it to that end; and that with this object in view they have been far more anxious to make their legislation satisfactory to the promoters of roads than they have been to take care to satisfy themselves that the building of a particular road is important on public grounds, or that the road when constructed will, in the service it will perform, meet a public demand. In every section of the country instances may be pointed out of roads which have been built without any legitimate demand for them whatever, so that the money invested in them has for the most part been as completely wasted as if it had been sunk in the sea. Either there has been no sufficient traffic that at fair rates would support them when built and keep them in suitable condition, or the traffic of the region which must support them was already so far provided for that a new road could only come in as a disturbing factor, to render those already in existence unprofitable, or to force itself upon them as a marketable commodity under circumstances which could be considered as little less than the levying of blackmail. There is reason for saying that, when the interest of the whole country is considered, it would be better if the necessity or propriety of every proposed new road were required to be passed upon by competent public authority before the State should delegate to anyone the eminent domain to be employed for its construction; but this is not now required, and under existing laws a new railway project is in very many cases little more than a mere demand by mercenary

speculators upon the credulity of the public, who, understanding very little about the elements that must constitute railroad prosperity, are ready enough to believe that riches are to be found in any plausible scheme that projectors put before them. In some instances we feel warranted in saying that the building of a road is entered upon with a full understanding, by those who plan and manage the construction, that the road itself, when complete, can have no value to stockholders except as a means of forcing the owners of roads already in existence and performing valuable service to the country to pay for that which has no intrinsic value a price measured by its power to do mischief.

"There is an evil here which is of no small magnitude; it may be measured in part by the millions which credulous people, often people of very small means, have invested in worthless roads, but in part also by other millions which have been paid for roads which even those who built them knew were not called for. Nevertheless, the great mass of the people of the country are only indirectly injured by the construction of such roads. The roads do not go out of existence even though it be fully demonstrated they ought never to have been built; every one of them has local communities more or less numerous for which it performs convenient service; they come into business relations with the other roads of the country; their operations are likely to be conducted in the same methods as those of other roads; and the great railway questions which concern and disturb the public, as well as those which trouble the railroad world, are likely to remain the same and to require the same discussion and demand the same final settlement as would have been essential if these needless roads had never been constructed.

"The 'railroad problem' is also not to be found in the condition in which the roads may be put by their projectors or managers, or the manner in which they are equipped for the purposes of operation. A road in bad condition is likely, for that reason, to cause great annoyance to the general public and to its customers. It may result in great delays and possibly in the loss of life as well as of property; a road badly equipped may also, for that cause, be of little or no service to the community; it may possibly be even detrimental, as standing in the way of something better. But commonly the difficulties which are found to arise from these deficiencies in construction or equipment are of a minor character, and do not to any great extent affect the general public. They certainly do not rise to the dignity of being considered the 'railroad problem' of the age. Neither are they likely to any very great extent to affect the relations of the roads with each other, and we must therefore assume that the problem which we are endeavoring to indicate and define would exist in nearly the same force as now were these deficiencies entirely cured; if, in other words, every road was in perfect condition and was fully equipped for any business likely to be offered to it. In point of fact, if we examine the roads of the country, we are not unlikely to be led to the conclusion that the equipment of roads may also go beyond any just demand that business makes upon it, as well as fall short of the proper business necessity. This is especially the case with the preparation made for passenger service, since the earnest and somewhat bitter competition that has existed between the leading lines of the country has begotten an extravagance in equipment which presents us the spectacle of palaces moving on wheels across the continent and inviting the traveling public, when upon journeys which but a few years ago could only be made under circumstances of great hardship and privation, to a participation now in comforts and even luxuries which in the case of most of them are

quite beyond their ordinary life at home. But this causes no complaint; the railroad company voluntarily supplies the luxuries, and the traveling public voluntarily pay for and enjoy them.

"If the freight traffic is not provided for bountifully and extravagantly, it is but just to say for the roads that deficiencies are not often serious, and when they are met with are usually found to exist in the case of roads which have come into existence under circumstances of doubtful expediency, and which since their construction have been unable to command the business that would secure and keep up their adequate equipment. But any amount of imperfection in these particulars will at most only touch upon outlying questions affecting slightly the railroad problem and not the main problem itself.

"The relations between the railroad corporations and their employés do not present the 'railroad problem' that is troubling the country. We may say this with great confidence, because neither the corporations themselves nor their employés seem to take a different view, and because also most of the laws which undertake to provide for the regulation of railways do not confer upon the authorities which they create for the purpose any jurisdiction over these relations. It is no doubt true that the public authorities might with entire propriety take them somewhat under consideration, since it not infrequently happens that the just performance of their own duties is impeded, or to some extent at least disturbed by the disputes which arise in railroad service and by the controversies which sometimes injuriously affect public transportation in considerable sections of the country. It might not only be admissible but important, and even a matter of duty, that in some cases railroad commissions should recommend legislation bearing upon these relations; legislation, for example, in regard to the use of machinery better calculated to protect employés against injury or loss of life; and legislation that would tend to lessen the injurious consequences of disturbances that arise over the question of wages, or of the unjust discharge of faithful servants. Possibly, also, it might be, if not strictly within their province certainly not foreign to their duties, to recommend to the railroads of the country and to the employés the adoption of some system of insurance under which either the railroad companies or the employés themselves, by some general rule of voluntary adoption, should provide a fund for the protection of families against the evils of poverty and destitution, especially in cases of accident resulting in death or in inability to perform labor. But whatever may be done on this subject, the fact would remain that after all that was possible had been considered and provided for by the parties to this service in regard thereto, the great railroad problem would still remain unsolved and still demand the best attention of railroad managers and of the public authorities. The relation of employer and employé touches it but lightly, and even on occasions when strikes affect the business of large sections of the country, so as to seem for the time being to make the relation between the strikers and their employers more important than anything else in those sections, yet they are seldom of such magnitude that the business of the country at large is seriously disturbed, and they are seldom of long continuance; so that if they constituted the only difficulties in railway service, the mischiefs which are felt on all hands would be far less serious than now; and it can scarcely be doubted that they would find speedy and satisfactory solution.

"The 'railroad problem' is not to be found exclusively, at least, in the diversities which exist between the legislation of the several States when compared with each other, or between the same legislation when

compared with that of the Federal Government. These diversities necessarily aggravate the existing difficulties and constitute obstacles in the way of the speedy and effectual removal of some of the worst in which the general public is concerned; but the difficulties existing in the relations between the roads themselves are affected but slightly by differences in legislation. Remove these, and the clashing of interests between the roads will be the same as now; the temptation to unfriendly action for the very purpose of inflicting injury upon rivals, or of embarrassing their operations with a view to forcing what can not be accomplished by negotiation, will be as strong as ever. I need not enlarge upon this, for it is obvious; and, so long as the fact is as stated, the railroad problem must remain, whatever may be the laws that State or Territory or Nation may have passed and enforced in mitigation of the evils.

"The 'railroad problem' is not to be found altogether in the fact that railroad rates are supposed by the public to be in a great many cases much too high; or that there is unlawful discrimination in the transportation of freights and of passengers, and that many persons are carried free who are not entitled to it by law; or that in the cases in which exceptions are made by law to the general rules which are prescribed, the railroad corporations contrive to increase these exceptions in inadmissible or unwise ways to the detriment of their own revenues, or to the increase of the charges that are made against the community in general. The problem without question is present here, but not in its entirety. There is no reasonable doubt that railroad charges are often made higher than they should be. This is sometimes made clear on an investigation into the facts, where those who make them are given the amplest opportunity to justify their rates if they can do so. And it may not unjustly be said that they themselves in many cases furnish evidence of more or less conclusive nature that the public complaints are not without foundation; they do so when they cut rates in the warfare with each other to an extent that greatly reduces their annual income and still leaves them in a condition to make respectable dividends to stockholders. They also furnish evidence tending in the same direction when they carry great numbers of persons free of charge; a number which we hope is diminishing from year to year, but which nevertheless, when the whole country is considered, is still enormous; embracing as it does among the private citizens who are thus favored, not the men of small means to whom the charge of transportation would be a serious burden and must therefore very much restrict their means of indulgence, but the men of large means who, because they are such, have no claim whatever to the favor; embracing also officials of all grades, and especially such as are empowered to make state and municipal laws or regulations bearing upon the subject of railway management. The discredit into which the use of the ordinary evidence of a right to free transportation has fallen is so great that both the corporations and the persons who receive it deem it politic to resort to other devices, the most frequent perhaps being the giving of mileage books; so that a state legislator or city mayor or other officer, when he uses it, may appear to be paying his passage though in fact he is receiving it free. I need hardly say that the giving the transaction this form does not in any degree relieve it of the discredit which fairly attaches to it, or lessen in the least its moral turpitude; on the contrary, it adds to the main offense of obtaining transportation at the cost of the public, the cowardice of going through the forms of payment, that by this false pretense the offender may cheat his fellow-passengers into the be-

lief that he is doing what a proper regard for the rights of others would require him to do. In some sections of the country the practice here referred to has continued for such a length of time that it seems to be expected by the general public that, as a matter of course, it will be continued indefinitely, and it is therefore believed to be practiced by every successive incumbent of certain offices. Whoever would investigate the sources of political corruption in such sections would do well to inquire to what extent they had their origin in public opinion being debauched by these corrupt practices until at length the grosser forms of political misconduct came to be looked upon as matters of course, and tolerated or excused for that reason.

"The manner in which advantage is taken of the exceptions of the statute in order to avoid charging the regular rates also has a tendency in the direction of showing that the regular rates are higher than they should be. Thus the statute in forbidding discriminations in passenger carriage makes exceptions for the case of excursions; and how diligent some roads are in finding excuses for excursions in which they are to carry the passengers for a mere fraction of the customary rates is well known to us all. The excuse advanced may be that thereby they create business which would not otherwise come to them; that they gain favor by giving special accommodation to communities or societies at particular times and on special occasions, and so on; but we have a right to assume that they nevertheless expect to make and do, as a general fact, make some profit on every such occasion, except when calamities befall them through the accidents which are much more likely to attend special trains, running on unusual time, than the regular trains. A person investigating the subject with a view to reaching the underlying reasons for their action would be very likely to inquire why, instead of manifesting great anxiety to increase the number of occasions for exceptional trains carrying passengers below the regular rates, the company does not make the regular rates as low as can reasonably be afforded, and thereby invite the public to make excursions, not on special occasions merely, but continuously; thus increasing the aggregate passenger traffic though taking it by the ordinary and safe trains, as the railroads of some foreign countries have done without loss by a similar reduction of rates. The reason for making this inquiry would seem to be specially forcible when it is borne in mind that the exceptional trains that are run at reduced rates furnish to a very considerable extent the opportunities which the class of people known as scalpers embrace to make great profits out of the railroad companies, and, through them, out of the general public who, in their regular travels, must pay rates which are maintained above what would otherwise be necessary, that those who charge them may not be the losers through the operations of this class of persons.

"But if the railroad companies were chargeable with no breach of law or of sound morality, or with want of good policy in the carriage of passengers free, or of either passengers or freight at unjustly discriminating rates, and if they made use of their privileges under the exceptional provisions of the statutes wisely and justly, there would still be the same railroad problem that exists now—not, it is true, accompanied by as many evils as now, but nevertheless demanding solution as it now demands it, only somewhat less unfortunately.

"Many other things in railroad service are causes of annoyance to the public, or tend to break up friendly and useful relations as between the roads themselves, but they may be passed over lightly at this time, because they touch but lightly upon the great problem that confronts

the public and makes such serious demand upon the best thought of the country. Thus the refusal of one road to unite with another in making convenient arrangements for the transfer of freight or passengers from one line to the other without unnecessary delay, or the making of arrangements with one company which are unjustly discriminating as against another, are seen in some cases to be evils of no slight magnitude; but such cases are not numerous; they are believed to be diminishing in number from year to year, and, for the most part, they can be dealt with by the public authorities on a consideration of all the facts with no great difficulty.

"The troubles that are always present, always annoying, and always difficult of adjustment, are those which relate to the making of rate sheets, and to the manner in which these are observed or treated after they are made. It is here that we discover a problem that is not narrow or temporary, and that does not touch lightly upon the relations between the railroads themselves, but is seen in nearly all their controversies and misunderstandings, and that is the prolific parent of nearly all the difficulties between the railroads and those who have occasion for their services. It is the unjust nature of the rate sheets when the rights of the public or of other roads are considered; it is the refusal to join with other roads in making them, or the demand of an unreasonable share of a joint rate when one is made; it is the sudden reduction in rates when injury can be done to a rival by resorting to that measure, or when it is hoped that the rival can be compelled thereby to give assent to some measure to which assent can not be obtained by negotiation; it is the refusal to unite in through bills of lading at agreed rates, or to receive for transportation of persons the tickets that have been given by other roads; it is the failure to abide by understandings concerning rates when a disregard of them seems to promise a temporary advantage; in short, it is the manner in which this whole subject of making rates is dealt with and treated by the railroad companies, and the effect thereby upon their own interests respectively, the interests of stock and bond holders, and the interests of those who, willingly or unwillingly, are their customers, that present the fundamental and still unsolved problem which must necessarily address itself, first of all to the railroad managers of the country, and after that to the public authorities. The evils in railroad service nearly all find their origin here; and especially is this true of those that are most difficult and inveterate. The railroad problem will be dealt with effectually when the power to fix the rates for railroad transportation is placed upon such a basis that the evils now so prominent and troublesome and persistent, which spring from its exercise, shall be cured and the power itself brought under effectual regulation.

"When the number of railroads which are now merely subsidiary to other and stronger lines, either through being brought into the same interest or from being leased or otherwise effectually controlled, are left out of account, there are something like five hundred in this country still remaining whose boards have the power to make rates for the carriage of passengers and property. These boards are by the law left to exercise in the first instance what is practically a free and unlimited authority in the making of rate sheets. They may make them low or high, just or unreasonably discriminating as between persons and property, or different classes of property, or between different centers of trade, at pleasure; the few instances in which the laws have undertaken to prescribe a precise limit being in the main confined to passenger transportation. The several boards are not obliged to agree with each

other as to what the rates shall be; it may be their policy to come to agreement, and it may be assumed that they will recognize this fact and endeavor to come to some understanding in advance, but this is not compulsory, and it not unfrequently happens that a single road will proceed to make rates wholly irrespective of what has been done or proposed by other roads with which it must come into competition or relations of some sort in respect to business. It was at first thought by those who made the laws for the building and management of roads that to leave the authority thus unrestricted was the best possible condition of things; that it would lead to active competition in rates, of which the general public would have the benefit; that the competition would as a matter of course force the rates down to a reasonable point; in short, that the competition would act precisely as it does in other lines of business. Experience has shown that this idea of railroad competition is a mistaken one; that it can not be compared with competition in the channels of commerce in general; that there are no such tests of the value of railroad service as can fix the limit down to which a road may go without inevitable loss upon its business as an aggregate; that it may carry some classes of its business at impolitic, if not in fact at losing rates, and yet make profits upon its whole operations by charging to other classes of its business rates which may perhaps seem to be excessive, and yet can not clearly be shown to be so because of the absolute impossibility of making distinct apportionment between the cost of the service rendered to one class and that rendered to the other. Indeed, it is now very well known that in many cases where roads are carrying freights at what seem to be no more than reasonable rates, on lines leading directly from one great business center to another, other roads whose lines are of twice the distance in length may be carrying the like freights at the same or at even less rates, though the expense to them is presumably twice as great. This they do because they are forced to do so by a situation which they find absolutely controlling. The general fact is that in severe competition between business centers the very long route carries, not at the same rate merely, but at a lower rate, because otherwise it would not get the business to carry. How distinctly is it seen here that it is utterly impossible to judge of railroad competition and its effects, its usefulness, and its mischiefs, by comparing it with competition as we encounter it in other lines of business.

"We have said that every one of these five hundred operating roads, through its managing officers, may make rate sheets at pleasure. The rates are subject to be changed to some extent afterwards when they are found to be violative of public rights or interests, but the public authorities are not consulted, and their consent is not asked as a prerequisite to putting the rate sheets in force. If a rate sheet affected only the road itself and its customers the fact stated would in a great many cases be of local importance only, and other roads not directly competing with the road making it need not concern themselves specially with its being put in force. But so inextricably are the railroads of the country intermingled in interest; in so many ways do they form routes from business center to business center; from the lakes to the gulf, and from ocean to ocean; so easy is it for almost any seemingly unimportant road to be made a part of some direct or indirect route which shall constitute a great channel of commerce, that any considerable change in the rate sheets by any one of these five hundred boards is not only likely to affect the business and the rate sheets of the roads which are its immediate rivals, but to reach out also in its influence from road

to road in all directions; not over small neighborhoods, but from State to State, until what seemed to be the action, and was perhaps the hasty and reckless action, of a mere local board may become almost of continental importance. An ill-advised act possibly resulting from passion or from a belief that a power to do mischief when thus exercised will compel others to do what they would not otherwise consent to, by way of purchasing peace, may thus carry disorder into the railroad system of a large section of the country if not into the whole of it, and may compel a change in the rate sheets of all the roads which form the lines competing with those of which the road whose rate sheet causes the disorder is or can be made to become a constituent part.

"Now it need hardly be said in this convention that one of the most important things to be accomplished in the regulation of railroads is to secure steadiness of rates; I do not mean that sort of steadiness that would prevent the gradual reduction of railroad charges as it should be seen to be practicable and just for the railroads to make it; but I mean the sort of steadiness that makes changes only in the proper direction, and when it does make them, does so deliberately, carefully, after consideration of all the interests involved, and after such reasonable notice to the public as well as to the railroad interests as will enable due provision to be made by others to prevent needless loss and injury therefrom. All sudden changes are necessarily to some extent injurious; they are injurious even though they are made in the direction of lower rates, and when as a matter of right they ought to be made in that direction, for they force sudden changes also in the values of property; they affect in unexpected ways contracts made in the commercial world; and they give abundant opportunities for fraudulent understanding as between railroad officials and large dealers; opportunities which the public are certain to suspect are not unfrequently availed of. The law does well when it requires that a notice reasonable in point of time shall be given not merely of advances in rates but of reductions also. This is right and proper even when the reductions result from competition properly so-called in railroad service; but the sudden cutting of rates is usually an act which can by no proper use of terms be called a result of legitimate competition. Almost invariably it is an act of open and avowed warfare, entered upon not to benefit the public, but to injure a rival line. It differs from the warfare between nations in this, that in the case of international war the effects can commonly be limited for the most part to those who engage in it, while the rate war on the other hand injures not merely the parties engaged, but possibly to an equal extent other railroads whose operations reach the same sections, while injuring also far more than it benefits the business community that seeks to take advantage of it.

"This, then, is the 'railroad problem.' There are mischiefs in railroad service that are outside of it, but we distinctly indicate the main source of difficulty when we place our finger upon the power as it exists now to make and unmake the rates for passenger and freight transportation. So long as five hundred bodies of men in the country are at liberty to make rate sheets at pleasure, and to unmake or cut and recut them in every direction at their own unlimited discretion, or want of discretion, and with little restraint on the part of the law except as it imposes a few days' delay in putting changes in force, the problem will remain to trouble us, the mere existence of the power making losses, disorder, and confusion constantly imminent. The authority to reduce rates when they are found to be excessive is but a slight corrective, and reaches the evils only on the public side; and I need hardly remind

you who understand it so well, that in this matter of rates, the power on the part of the public authorities to compel the railroads to do what is just to each other in respect to observing rates which they have once made, and to adhering to rate sheets until there is reasonable ground for changing them, is so very slight that it may really be regarded as too insignificant to be spoken of as possessing substantial value.

"A problem so momentous as that described the members of this convention may very well decline to discuss in its totality, or even at all, except as by law they may have been given authority to deal with minor questions embraced within it; but this need not hinder a recognition of its difficulties nor of the infinite powers of mischief which are involved. The first effective step towards the removal of any great public evil is to have distinctly pointed out its scope and its proportions, that those who undertake a reform may not be misled into accepting some single feature as constituting the whole, or some minor consequence as embracing the aggregate of all the mischiefs which do or may result from it.

"In the preparation of this paper the purpose to limit it strictly to indicating what the railroad problem is has been closely adhered to, and no attempt whatever has been made to indicate what should be the solution."

At the conclusion of his address the chairman appointed the following gentlemen as a committee on order of business: George M. Woodruff, of Connecticut; Spencer Smith, of Iowa; William Himes, of Florida; William E. Rogers, of New York, and David N. Mortland, of Maine.

The report prepared by the foregoing committee was adopted.

The chairman of the committee on railway legislation, appointed at the last meeting of the convention, asked for further time, as the committee was not ready to report *in extenso*. The question was asked whether any action had been taken by the Interstate Commerce Commission to influence Congressional legislation. The presiding officer answered that such action had been taken and was before the committee in Congress in the form of a recommendation from the Commission.

A paper was read by ex-Commissioner Schoonmaker on "Discriminations from the use of private cars of shippers."

On motion, Judge Schoonmaker's paper was ordered to be incorporated in the minutes of the meeting.

An exhaustive paper on "Reasonable rates," by Hon. W. B. Fleming, chairman of the committee having charge of that subject, was then read.

Subsequently the following resolutions, prepared by the committee on reasonable rates, were voted on separately and adopted:

(1) That it is competent for the Congress of the United States and for the legislatures of the various States to regulate within their respective spheres the rates of freight and passenger traffic and travel, subject only to those legal and constitutional limitations which, under our system of Government, circumscribe the exercise of all legislative and administrative acts.

(2) That it is within the power of Congress and the State legislatures to delegate the power of reasonable regulation of rates to boards of commissioners, and to make their acts and findings upon questions of fact, after fair legal opportunity to be heard, as conclusive and binding upon the courts as the findings and acts of other administrative officers.

(3) That uniformity is desirable in Congressional and State legislation on the subject of rates to the end that public regulation of rates may be practically reached by the active coöperation between state and interstate commissions.

The committee on railway legislation was announced by the chairman as follows:

George G. Crocker, of Massachusetts; William R. Morrison, of the

Interstate Commerce Commission; W. S. Garber, of Nebraska; Henry R. Shorter, of Alabama; Samuel E. Pingree, of Vermont, and George M. Woodruff, of Connecticut. The committee was granted leave to sit again and report at a future session of the convention.

A report was heard from the committee on uniformity of railway accounts, and Prof. Henry C. Adams spoke briefly on the "Territorial assignment of statistics of operation."

On the announcement that the subject of "safety appliances for railroad cars" was before the convention, the following resolutions were reported by a committee specially appointed to consider that topic:

(1) That a committee of five be appointed by the chair to urge upon Congress as soon as possible after the opening of its next regular session the imperative need for action by that body calculated to hasten and insure the equipment of freight cars throughout the country with uniform automatic couplers and with train brakes, and the equipment of locomotives with driving-wheel brakes, and present and urge the passage of a bill therefor.

(2) That the committee, before presenting the bill to the appropriate Congressional committee, be requested, after public notice, to give a hearing to accredited representatives of such organizations of railroad officials or employes as may desire to be heard.

(3) That the secretary of this convention act as secretary of this committee.

The resolutions were adopted.

A resolution was passed continuing the committee on reasonable rates and instructing it to report to the next convention. On motion two additional members were added to this committee.

After the passage of a resolution that the committee, to which had been referred the subject of automatic couplers and continuous train brakes, be requested to report to the next convention on the expediency of requesting national legislation upon the lighting and heating of passenger cars, it was resolved that a committee of five be appointed to call the next convention, the call to be made for the second Wednesday of April, 1892, at Washington, D. C.

Inquiry was made as to the action of the Commission concerning ticket scalping, and Chairman Cooley called the attention of the convention to the report of the Interstate Commerce Commission, which treated that question very fully. He said there was quite a body of testimony on the evils of the whole system of railroad ticket-scalping, and a strong recommendation that legislation should be had.

The convention then adjourned.

APPENDIX G.

UNIFORMITY IN SAFETY APPLIANCES AND HEATING
OF PASSENGER CARS.

UNIFORMITY IN SAFETY APPLIANCES.

The subject of safety appliances was very fully considered in the Third Annual Report to Congress, but no definite recommendations were made at the time. The increased ratio of casualties for the year ending June 30, 1890, as shown by the Statistician's Report, which has just been issued, considered in the light of the sentiment which has been expressed by the different organizations of railroad employes through their representatives and by themselves directly, make it incumbent to again call the attention of Congress to the great need of uniformity in all safety appliances used on railroad cars and engines.

This was first touched upon as a national question at the First National Convention of Railroad Commissioners held in Washington, March, 1889, when a resolution was offered by the Hon. George G. Crocker, of Massachusetts, and unanimously adopted as follows:

Whereas thousands of railroad employes every year are killed or injured in coupling or uncoupling freight cars used in interstate traffic and in handling the brakes of such cars, and most of these accidents can be avoided by the use of uniform automatic couplers and train brakes; and

Whereas the success and growth of the system of heating cars by steam from the locomotive or other single source largely depends on the adoption in interstate traffic of an uniform steam coupler; and

Whereas these subjects are believed to be of pressing importance, and within the proper scope of the powers of the Congress of the United States, while attempts on the part of the individual States to deal with them have resulted, and must continue to result, in conflicting regulations:

Resolved, That we do respectfully and earnestly urge the Interstate Commerce Commission to consider what can be done to prevent the loss of life and limb in coupling and uncoupling freight cars used in interstate commerce, and in handling the brakes of such cars, and in what way the growth of the system of heating passenger cars from the locomotive or other single source can be promoted to the end that said Commission may make recommendations in the premises to the various railroads within its jurisdiction and make such suggestions as to legislation on said subjects as may seem necessary or expedient.

In compliance with the above-mentioned resolution the Commission endeavored to obtain from the different organizations of railroad employes, railroad officials, and others directly interested in the subject, their views upon the advisability of federal regulation of safety appliances, the result of which inquiry was submitted to Congress, as already stated, in the Third Annual Report of the Commission.

No definite action was taken by Congress though several bills were introduced both in the Senate and House of Representatives, and the Senate Committee on Interstate Commerce in April and May, 1890, heard many prominent railroad men and representatives of organizations of railroad employes, upon the subject.

In May, 1890, at the Second Annual Convention of Railroad Commissioners the subject was taken up at greater length than at the previous meeting, and a resolution was adopted as follows:

Resolved, That the respective States should require, either directly by law or indirectly through the instrumentality of their railroad commission, each railroad

corporation subject to their jurisdiction to place driving-wheel brakes and apparatus for train brakes on every locomotive constructed or purchased by it, and train brakes upon every freight car hereafter constructed or purchased by it, and also upon such cars and upon every freight car owned by it, the coupler or drawbar of which is repaired by it, an automatic coupler of the Master Car Builders' type at each end of the car.

It appears from the figures shown in the Second Annual Report of the Statistician of the Commission, for the year ending June 30, 1889, that during that year there was one death for every 357 employes, and one injury for every 35 employes; or considering the trainmen only, engineers, firemen, conductors and other trainmen, it is shown that railway accidents are the occasion of one death for every 117 employes and one injury for every 12 men employed. While the report for the year ending June 30, 1890, shows an increased ratio of deaths of employes, showing one death for every 306 employes, and one injury for every 33 employes. The increased ratio among trainmen only, engineers, firemen, conductors, and other trainmen, shows one death for every 105 employes, and one injury for every 12 men employed. Comparing these figures with the figures for the preceding year it is shown that, for the year ending June 30, 1889, there was one death for every 357 employes, while for the year ending June 30, 1890, there was one death for every 306 employes, an increase of 14.29 per cent in the death ratio for 1890 over 1889; and one injury for every 35 employes for the year ending June 30, 1889, as compared to one injury for every 33 employes for the year ending June 30, 1890, an increase of about 5.71 per cent for the year 1890 as compared with 1889; or, considering the trainmen only, for the year ending June 30, 1889, there was one death for every 117 employes, while for the year ending June 30, 1890, there was one death for every 105 employes, an increase of 10.26 per cent in the death ratio in 1890 over 1889. The ratio of injuries to such employes for the two years is the same. This fearful increase is worthy of serious consideration. Among no other class of organized labor is it so great or the risk incurred so hazardous. One of the chief causes of the deaths to railroad trainmen in the pursuit of their occupation may be attributed to the great variety of couplers used in coupling cars. The last report of the Statistician shows the use of thirty-seven different styles of couplers in constant use; this, it is believed, does not begin to cover those being experimented with; this, in itself, is a strong factor in favor of uniformity in safety appliances on railroad cars. By the same report is shown a total of 2,451 employes killed and 22,396 injured; of those killed, 369, or 15.05 per cent of the deaths were caused by coupling and uncoupling cars; while of the total of 22,396 employes injured, 7,842, or 35.02 per cent of the injuries resulted from the same cause; 561, or 22.89 per cent of the deaths, and 2,363, or 10.55 per cent of the injuries, resulted from falling from trains and engines. So that 37.94 per cent of the deaths and 45.57 per cent of the injuries resulted from causes, the effects of which would be rendered much less disastrous by the use of better appliances for the safety of railroad employes.

The item "Falling from trains and engines" may well be attributed to the necessity of being on top of cars to handle brakes. It may be assumed that a large per cent of the lives lost from this cause could have been saved by the use of continuous brakes, and that fully 90 per cent of the lives lost and injuries incurred through coupling and uncoupling cars could have been avoided by the use of a uniform automatic coupler.

The Third Annual Convention of Railroad Commissioners held in

Washington, March, 1891, fully realizing the gravity of the question, and wishing to obtain the views not only of the railroad organizations themselves, but of the presidents of all the railroads throughout the United States, appointed a committee on safety appliances, the members of which together with its functions are mentioned in Appendix F.

The committee thus appointed has the matter still under advisement, it having sought the opinions of both the railroad presidents and employés, the former through circulars sent them requesting their views as to the best means of bringing about uniformity in safety appliances, the latter by a hearing which was held in New York City on November 10, where the accredited representatives of the different organizations of railroad employés and others were heard. The result of the investigations thus made shows that uniformity in safety appliances is favored by all; the opinion as to the best means of bringing about such uniformity differs, but that it is necessary and desirable has not been questioned.

The fact, as shown by the last report of the statistician, of the use of thirty-seven different styles of coupler reported to the commission, must indicate the great need for uniformity. The means for bringing about such a result should be carefully considered, in justice to the employés and the railroads themselves. Many of the railroads have shown themselves willing and anxious to use all appliances which will insure greater safety to their employés, while others have made but very few steps in that direction, and it is only by national legislation that such an end can be reached.

The justice of the demands of the railroad employés for uniformity in safety appliances, more particularly in car couplers, can not be questioned and can better be appreciated when the difficulties, which the trainmen encounter daily and hourly in coupling and uncoupling cars, is understood. Under existing conditions when there are so many couplers in use it is impossible for men to know before going between the cars whether they have the ordinary links and pins to couple together, or two different types of the large variety of couplers now in use. No matter what coupler is used, no matter how perfect its mechanism and working, if it does not couple as well and as freely with every other coupler now in use as it will with another coupler of its own make, it is to that extent, a death trap. What the railroad employés of the country demand is uniformity. They want all couplers alike, and they are the men whose lives and persons are at stake, for with about a million freight cars in use the change to any particular coupler must cause a great injury to their number, and loss of life in bringing it about. This great element of uncertainty, coupled with the danger to life and limb in consequence of such uncertainty should be remedied so that trainmen when coupling and uncoupling cars may know that the couplers will be of the same type.

The expenditure of such large sums of money as this would involve upon the railroad companies should be fully considered in determining what is a reasonable time in which to bring about this needed change, and, on the other hand, the just demands of the railroad employés for their own protection and safety and for the protection of their wives and families who are dependent upon them should also be borne in mind.

A very large majority of freight cars are now equipped and are daily being equipped with the old link and pin coupling. A serious question is the adoption of some type as a standard, which, during the

transition period from the present chaotic condition of couplings to the state of substantial similarity which safety demands, shall most easily couple with the link and pin.

With whatever care and judgment this type be selected, it must inevitably result that many a poor fellow will lose life or limb before uniformity is finally attained. A necessary sacrifice to secure the greater safety to those who shall come after. But this sacrifice should surely be by every reasonable effort minimized to the utmost possible extent.

EDWARD A. MOSELEY,
Secretary.

HEATING OF PASSENGER CARS.

There is no longer room to doubt that the heating of passenger cars by steam, or some device other than the common stove (productive in the past of so many fatalities), has made such headway that the old-time method is certain of abandonment at no distant day on all American railroads.

As corroborative of this statement the following language was used in the report of the committee on steam heating and ventilating of passenger cars before the Master Car Builders' Association, in convention at Cape May, last June:

As steam heat has come to stay, and will not down at our bidding, but rather is pushed forward by public sentiment and the strong hand of law, it behooves this body to create and combine such devices as will insure both safety and economy in car heating.

It is evident from this report, formulated by experts, that the new system is no longer an experiment.

The growth of sentiment has not been altogether so rapid as the friends of progress in this direction may have desired, but encouragement is afforded by the fact that nine States of the Union, Connecticut, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New York, Rhode Island, and Vermont, have enacted laws which either empower the State railroad commissioners to enforce such orders relative to heating and lighting cars as may be required by public safety, or which absolutely prohibit steam railroads from heating passenger trains by stoves or furnaces kept inside the car, except in certain cases of accident or emergency.

These statutes are hereinafter given in detail.

A fearful instance of the sacrifice of human life was the collision in Fourth avenue tunnel in New York City, on the 20th of January, 1891, an accident rendered still more horrifying by the fact that the wreck caught fire and, beyond a doubt, of the 6 persons killed several lost their lives in the flames. It is not positively known whether the holocaust was due to the stove or heater, or to the breakage of the kerosene lamps which were used on the ill-fated train. The latter are almost as great a source of danger as the former, and if there is any feasible way of providing a substitute for kerosene, railroad companies should be quick to make the change.

The mechanical difficulties in the way of supplying heat from the engine to the cars so as to make them comfortable in the coldest weather seem to have been fully overcome. The minor problems of overheating and unequal distribution of heat in the different parts of the car are still engaging attention. The matter of a perfect steam coupling between the cars which shall neither leak, freeze up, burst, or cause delay in coupling or uncoupling, nor wear out rapidly, has developed much inventive talent, and it is claimed on more than one side that all these requirements have been met. In view of what has already been accomplished, though perfection is still in the future, car-builders and railway managers are bound to concede that the employment of fire in

passenger cars is gradually but surely to be superseded by some method of using the heat generated in the boiler of the locomotive.

The following table, showing the car-heating equipment of a large percentage of the roads of the United States and Canada, is taken from the Railway Review:

	Number.	Per cent.
Total number of cars reported	35, 772	100. 0
Cars heated by steam	9, 017	26. 7
Cars heated by hot water	9, 118	27. 0
Cars heated by stove	14, 612	43. 3
Engines equipped for steam heating	3, 804	.....

Some passenger equipment cars are not heated at all, which explains why the above given percentages fall short of 100.

The same publication gives additional tables showing what individual roads have done, and also group results by geographical division. The effect of legislation is clearly perceived in Table No. 1, the high percentage of New York lines standing out in marked contrast to the slender figures of systems west of Chicago, where no legal requirements have operated to hasten the adoption of steam-heating apparatus.

Table No. 1.

	No. of cars.	Heated by steam.		Per cent of total steam-heated cars.
		No.	P. ct.	
New England roads	3, 488	1, 648	27	21
New York roads	4, 518	3, 623	80	47
Others east of Chicago	10, 630	1, 746	16	22
Roads west of Chicago	8, 858	717	8	10

Table No 2.

Name of road.	Total cars.	Heated by—		
		Steam.	Water.	Stoves.
Atchison, Topeka and Santa Fé	512	4	66	442
Baltimore and Ohio	653	126	16	511
Chicago and Northwestern	544	31	101	412
Chicago, Burlington and Quincy System	650	2	162	486
Chicago, Milwaukee and St. Paul	711	221	116	374
Chicago, Rock Island and Pacific	371	118	117	136
Cleveland, Cincinnati, Chicago and St. Louis	412	228	78	106
Grand Trunk of Canada	842	31	293	518
Illinois Central	493	1	290	202
Missouri Pacific	486	2	223	261
Northern Pacific	378	.....	177	201
Pennsylvania System	2, 971	206	403	2, 362
Philadelphia and Reading	643	8	176	448
Southern Pacific	810	.....	202	576
Union Pacific	622	36	171	415
Total	11, 098	1, 014	2, 591	7, 450

The figures given above are of more than ordinary interest, as they show a larger proportion of the passenger equipment to be heated by steam than is generally believed. The common stove is hereby shown to be employed in less than half of the passenger cars of the country.

The importance of improved and safer methods of heating has also been recognized in Europe. An appropriation of 80,000 marks has been made to introduce steam-heating on the state railroads of Wurtemberg, Germany, and the Swiss Government has formulated a code of rules providing that passenger cars must be heated from the 1st of October till the close of April should the outside temperature fall lower than 41° F. By the legislative act of July 1, 1889, that Government also decreed that all cars must be heated by steam within five years from that date.

On the 23d of June, 1891, a circular letter was addressed to the chairman of the various State railroad commissions, asking whether any recent legislation on the subject of heating cars by steam or the lighting thereof has been had, and if there was any special public interest displayed that might lead to such legislation. Only a few of those addressed failed to respond.

It must not be forgotten that in certain portions of the country, the Southern States in particular, the climatic conditions are such that the heating of trains is considered a minor matter, and it is not to be expected that railroad companies in those States will be as quick to do away with the old style of heating as in northern latitudes, where the winters are longer and more severe. This accounts for the negative answers received from every Southern State. The secretary of the State of Arkansas writes "that no legislation of this character has been had in our State, nor is there much public interest in the subject, simply because the climate is genial, and not very much in the way of heating is necessary to keep cars comfortable." The secretary of the Territory of Arizona also writes that the "climatic conditions are such here as to remove the interest in such matters."

In the last Illinois legislature several bills bearing on improved methods of passenger car heating and lighting were introduced, but failed to pass. Recommendations in regard to the utility and importance of safety appliances will be made to the next legislature by the commission of that State.

In Ohio, Commissioner Norton writes that his department strongly urged on the legislature the enactment of a law touching on the heating and lighting of passenger trains. Nothing was done, though great interest was manifested at the time.

Commissioner Anthony, of Kansas, replies that there has been no legislation in that State; that the public rests confident in the wisdom of the companies to protect passengers without resort to legislation.

In none of the other States, with the exception of those that have enacted laws, does there appear to be any movement, outside of a sporadic press opinion, looking to reformation of prevailing devices.

STATUTES OF VARIOUS STATES RELATING TO THE HEATING OF PASSENGER CARS BY STEAM.

Connecticut.—Section 3569 of the statutes respecting railroads reads as follows:

The railroad commissioners may make any and all orders which shall seem to them to be required by public safety and prudence relative to heating and lighting passenger cars, and shall report any neglect by any railroad companies to comply with such orders to the general assembly at its next regular session.

New York.—The act of 1887 to regulate heating of steam passenger cars provides:

It shall not be lawful for any steam railroad doing business in this State, after the first day of November, eighteen hundred and eighty-eight, to heat its passenger cars, on

other than mixed trains, by any stove or furnace kept inside the car or suspended therefrom, except it may be lawful, in case of accident or other emergency, to temporarily use such stove or furnace with necessary fuel: *Provided*, That in cars which have been equipped with apparatus to heat by steam, hot water, or hot air from the locomotive, or from a special car, the present stove may be retained to be used only when the car is standing still: *And provided, also*, That this act shall not apply to railroads less than fifty miles in length, nor to the use of stoves of a pattern and kind to be approved by the railroad commissioners, for cooking purposes in dining-room cars.

The above statute was amended by chapter 189, laws of 1888, as follows:

In special cases the board of railroad commissioners may extend the time for a period not exceeding one year from November 1, 1888, for any steam railroad doing business in this state to heat its passenger cars by any stove or furnace kept inside the car or suspended therefrom.

Massachusetts.—In 1882 a law was enacted which required that all passenger and sleeping cars as well as express and mail cars used in the State should be provided with such safeguards for protection against fire as might be approved in writing by the board of railroad commissioners. This act contemplated the use of individual heaters.

But in 1887 the following act doing away absolutely with the stove for heating purposes was passed:

No passenger, mail, or baggage car on any railroad in this Commonwealth shall be heated by any method of heating, or by furnace, or heater, unless such furnace or heater shall first have been approved in writing by the board of railroad commissioners: *Provided, however*, That in no event shall a common stove be allowed in any such car: *And provided also*, That any railroad corporation may, with the permission of said board, make such experiments in heating their passenger cars as said board may deem proper.

New Hampshire.—An act to regulate the heating of passenger cars, passed June, 1887, reads:

No passenger, mail, or baggage car on any railroad in this State shall be heated by any method of heating or by any furnace or heater, unless such method or the use of such furnace or heater shall first have been approved in writing by the board of railroad commissioners: *Provided, however*, That in no event shall a common stove be allowed in any such car: *Provided also*, That any railroad corporation may, with the permission of said board, make such experiments in heating their passenger cars as said board may deem proper: *Provided also*, That the provisions of this act shall not apply to mixed trains or trains which consist of freight and passenger cars.

Rhode Island.—In this State the legislature enacted that—

From and after the first day of December, anno Domini eighteen hundred and ninety-one, no passenger, mail, or baggage car on any railroad in this State shall be heated by any method of heating, or by furnace or heater unless such furnace or heater shall first have been approved in writing by the railroad commissioner: *Provided, however*, That in no event shall a common stove be allowed in such car. Every railroad corporation which shall use any car in violation of the provisions of this section shall be fined one hundred dollars for every day on which such car shall be used, one-half thereof to the use of the complainant, and one-half thereof to the use of the State.

Michigan.—By an act of the Michigan legislature passed in 1887, railroad companies owning or operating any railroad wholly or partly within this State are required to generate the heat for warming the cars outside and independent of the cars, or by the use of heaters in the cars so constructed that in case of accident it could be practically impossible for the fire to escape from the stove or heater so as to set fire to the cars, or provide some automatic, or quickly and easily operated provision, for extinguishing fires. When the heat is generated outside of the cars, heaters constructed as provided for in the act may be retained within for use in case of emergencies. No device can be adopted for general use until approved by the Commissioner of Railroads, who has the

power to order any stoves or heaters removed which, in his judgment, are unsafe in case of accident. He is empowered to use such reasonable means to provide for the carrying out of the spirit of this law, and promote the safety of passengers and employés of railroad companies, as the condition of the roads and experience in the use of the various methods of heating have demonstrated to be practicable and necessary.

By the terms of act No. 207 of the laws of 1879, it is not permitted that any passenger car shall be lighted by naphtha or by any illuminating oil or fluid made in part of naphtha, or wholly or in part from coal oil or petroleum, or other substance or material which will ignite at a temperature of less than 300° F.

Vermont.—The law in this State is as follows:

After December one, eighteen hundred and eighty-nine, no passenger, mail or baggage cars, other than mixed train, on any steam railroad in this State, shall be heated by any method or heater, unless such method, or the use of such furnace or heater, shall first have been approved in writing by the board of railroad commissioners: *Provided*, That nothing in this act shall authorize the commissioners to prohibit the heating of cars by steam from the engines.

Maine.—The Maine statute is in the following language:

SEC. 1. No passenger, mail, or baggage car on any railroad in this State shall be heated by any method of heating or by any furnace or heater, unless such methods or the use of such furnace or heater shall first have been approved in writing by the board of railroad commissioners: *Provided, however*, That in no event shall a common stove be allowed in any such car, *And provided also*, That any railroad corporation may, with the permission of this board, make such experiments in heating their passenger cars as said board may deem proper.

SEC. 2. No passenger car on a railroad shall be lighted by naphtha nor by an illuminating oil or fluid made in part of naphtha, or which will ignite at a temperature of less than three hundred degrees Fahrenheit.

Maryland.—The common stove is prohibited in Maryland, as appears by the following act of the general assembly; though power was subsequently conferred on the board of public works to extend the time which stoves might be used until May 1, 1892, which the board resolved on doing. The statute reads:

Be it enacted by the general assembly of Maryland, That it shall not be lawful for any steam railroad doing business in the State after the first day of May, eighteen hundred and ninety, to heat its passenger cars by any stove or furnace kept inside of the car or suspended therefrom, except that it may be lawful in case of accident or other emergency to temporarily use such stove or furnace with necessary fuel: *Provided*, That in cars which have been equipped with apparatus to heat by steam, hot water, or hot air from the locomotive, or from a special car, the present stove may be retained to be used only when the car is standing still: *And provided also*, That this act shall not prevent the use of stoves for cooking purposes in dining-room cars.

EDW. A. MOSELEY,
Secretary.

APPENDIX H.

THE ACT TO REGULATE COMMERCE AS AMENDED.

RULES OF PRACTICE AND FORMS IN CASES AND
PROCEEDINGS BEFORE THE COMMISSION.

THE ACT TO REGULATE COMMERCE.

(As amended March 2, 1889, and February 10, 1891).

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of this act shall apply to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad, or partly by railroad and partly by water when both are used, under a common control, management, or arrangement for a continuous carriage or shipment from one State or Territory of the United States, or the District of Columbia, to any other State or Territory of the United States, or the District of Columbia, or from any place in the United States to an adjacent foreign country or from any place in the United States through a foreign country to any other place in the United States, and also to the transportation in like manner of property shipped from any place in the United States to a foreign country and carried from such place to a port of transshipment, or shipped from a foreign country to any place in the United States and carried to such place from a port of entry either in the United States or an adjacent foreign country: *Provided, however,* That the provisions of this act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property, wholly within one State, and not shipped to or from a foreign country from or to any State or Territory as aforesaid.

Carriers and transportation subject to the act.

The term "railroad" as used in this act shall include all bridges and ferries used or operated in connection with any railroad, and also all the roads in use by any corporation operating a railroad, whether owned or operated under a contract, agreement, or lease; and the term "transportation" shall include all instrumentalities of shipment or carriage.

What the terms "railroad" and "transportation" include.

All charges made for any service rendered or to be rendered in the transportation of passengers or property as aforesaid, or in connection therewith, or for the receiving, delivering, storage, or handling of such property, shall be reasonable and just; and every unjust and unreasonable charge for such service is prohibited and declared to be unlawful.

Charges to be reasonable.

SEC. 2. That if any common carrier subject to the provisions of this act shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property, subject to the provisions of this act, than it charges, demands, collects, or receives from any other person or persons for doing for

Unjust discrimination forbidden.

him or them a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful.

SEC. 3. That it shall be unlawful for any common carrier subject to the provisions of this act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

Undue or unreasonable preference or advantage forbidden.

Every common carrier subject to the provisions of this act shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding, and delivering of passengers and property to and from their several lines and those connecting therewith, and shall not discriminate in their rates and charges between such connecting lines; but this shall not be construed as requiring any such common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business.

Facilities for interchange of traffic.

SEC. 4. That it shall be unlawful for any common carrier subject to the provisions of this act to charge or receive any greater compensation in the aggregate for the transportation of passengers or of like kind of property, under substantially similar circumstances and conditions, for a shorter than for a longer distance over the same line, in the same direction, the shorter being included within the longer distance; but this shall not be construed as authorizing any common carrier within the terms of this act to charge and receive as great compensation for a shorter as for a longer distance: *Provided, however,* That upon application to the Commission appointed under the provisions of this act, such common carrier may, in special cases, after investigation by the Commission, be authorized to charge less for longer than for shorter distances for the transportation of passengers or property; and the Commission may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section of this act.

Long and short haul provision.

SEC. 5. That it shall be unlawful for any common carrier subject to the provisions of this act to enter into any contract, agreement, or combination with any other common carrier or carriers for the pooling of freights of different and competing railroads, or to divide between them the aggregate or net proceeds of the earnings of such railroads, or any portion thereof; and in any case of an agreement for the pooling of freights as aforesaid, each day of its continuance shall be deemed a separate offense.

Pooling of freights and division of earnings forbidden.

SEC. 6. (*As amended.*) That every common carrier subject to the provisions of this act shall print and keep open to public inspection schedules showing the rates and fares and charges

for the transportation of passengers and property which any such common carrier has established and which are in force at the time upon its route. The schedules printed as aforesaid by any such common carrier shall plainly state the places upon its railroad between which property and passengers will be carried, and shall contain the classification of freight in force, and shall also state separately the terminal charges and any rules or regulations which in anywise change, affect, or determine any part or the aggregate of such aforesaid rates and fares and charges. Such schedules shall be plainly printed in large type, and copies for the use of the public shall be posted in two public and conspicuous places, in every depot, station, or office of such carrier where passengers or freight, respectively, are received for transportation, in such form that they shall be accessible to the public and can be conveniently inspected.

Printing and posting of schedules of rates, fares, and charges.

Any common carrier subject to the provisions of this act receiving freight in the United States to be carried through a foreign country to any place in the United States shall also in like manner print and keep open to public inspection, at every depot or office where such freight is received for shipment, schedules showing the through rates established and charged by such common carrier to all points in the United States beyond the foreign country to which it accepts freight for shipment; and any freight shipped from the United States through a foreign country into the United States, the through rate on which shall not have been made public as required by this act, shall, before it is admitted into the United States from said foreign country, be subject to customs duties as if said freight were of foreign production; and any law in conflict with this section is hereby repealed.

Printing and posting of schedules of rates on freight carried through a foreign country.

No advance shall be made in the rates, fares, and charges which have been established and published as aforesaid by any common carrier in compliance with the requirements of this section, except after ten days' public notice, which shall plainly state the changes proposed to be made in the schedule then in force, and the time when the increased rates, fares, or charges will go into effect; and the proposed changes shall be shown by printing new schedules, or shall be plainly indicated upon the schedules in force at the time and kept open to public inspection. Reductions in such published rates, fares, or charges shall only be made after three days' previous public notice, to be given in the same manner that notice of an advance in rates must be given.

Ten days' public notice of advances in rates to be given.

Three days' public notice of reduction in rates to be given.

And when any such common carrier shall have established and published rates, fares, and charges in compliance with the provisions of this section, it shall be unlawful for such common carrier to charge, demand, collect, or receive from any person or persons a greater or less compensation for the transportation of passengers or property, or for any services in connection therewith, than is specified in such published schedule of rates, fares, and charges as may at the time be in force.

Published rates not to be deviated from.

Every common carrier subject to the provisions of this

Copies of schedules of rates, fares, and charges to be filed with Commission.

Copies of contracts and agreements to be filed with Commission.

Joint tariffs to be filed with Commission.

Power of Commission to prescribe publicity.

Ten days' notice to Commission of advance in joint rates, fares, and charges.

Three days' notice to Commission of reduction in joint rates, fares, and charges.

Power of Commission to make advances or reductions public.

Joint rates, fares, and charges not to be deviated from.

Commission may prescribe forms of schedules of rates, fares, and charges.

Penalties for neglecting or refusing to file or publish rates, fares, and charges.

act shall file with the Commission hereinafter provided for copies of its schedules of rates, fares, and charges which have been established and published in compliance with the requirements of this section, and shall promptly notify said Commission of all changes made in the same. Every such common carrier shall also file with said Commission copies of all contracts, agreements, or arrangements with other common carriers in relation to any traffic affected by the provisions of this act to which it may be a party. And in cases where passengers and freight pass over continuous lines or routes operated by more than one common carrier, and the several common carriers operating such lines or routes establish joint tariffs of rates or fares or charges for such continuous lines or routes, copies of such joint tariffs shall also, in like manner, be filed with said Commission. Such joint rates, fares, and charges on such continuous lines so filed as aforesaid shall be made public by such common carriers when directed by said Commission, in so far as may, in the judgment of the Commission, be deemed practicable; and said Commission shall from time to time prescribe the measure of publicity which shall be given to such rates, fares, and charges, or to such part of them as it may deem it practicable for such common carriers to publish, and the places in which they shall be published.

No advance shall be made in joint rates, fares, and charges, shown upon joint tariffs, except after ten days' notice to the Commission, which shall plainly state the changes proposed to be made in the schedule then in force, and the time when the increased rates, fares, or charges will go into effect. No reduction shall be made in joint rates, fares, and charges, except after three days' notice, to be given to the Commission as is above provided in the case of an advance of joint rates. The Commission may make public such proposed advances, or such reductions, in such manner as may, in its judgment, be deemed practicable, and may prescribe from time to time the measure of publicity which common carriers shall give to advances or reductions in joint tariffs.

It shall be unlawful for any common carrier, party to any joint tariff, to charge, demand, collect, or receive from any person or persons a greater or less compensation for the transportation of persons or property, or for any services in connection therewith, between any points as to which a joint rate, fare, or charge is named thereon than is specified in the schedule filed with the Commission in force at the time.

The Commission may determine and prescribe the form in which the schedules required by this section to be kept open to public inspection shall be prepared and arranged, and may change the form from time to time as shall be found expedient.

If any such common carrier shall neglect or refuse to file or publish its schedules or tariffs of rates, fares, and charges as provided in this section, or any part of the same, such common carrier shall, in addition to other penalties herein prescribed, be subject to a writ of mandamus, to be issued by any circuit court of the United States in the judicial district wherein the principal office of said common carrier is situ-

ated, or wherein such offense may be committed, and if such common carrier be a foreign corporation in the judicial circuit wherein such common carrier accepts traffic and has an agent to perform such service, to compel compliance with the aforesaid provisions of this section; and such writ shall issue in the name of the people of the United States, at the relation of the Commissioners appointed under the provisions of this act; and the failure to comply with its requirements shall be punishable as and for a contempt; and the said Commissioners, as complainants, may also apply, in any such circuit court of the United States, for a writ of injunction against such common carrier, to restrain such common carrier from receiving or transporting property among the several States and Territories of the United States, or between the United States and adjacent foreign countries, or between ports of transshipment and of entry and the several States and Territories of the United States, as mentioned in the first section of this act, until such common carrier shall have complied with the aforesaid provisions of this section of this act.

SEC. 7. That it shall be unlawful for any common carrier subject to the provisions of this act to enter into any combination, contract, or agreement, expressed or implied, to prevent, by change of time schedule, carriage in different cars, or by other means or devices, the carriage of freights from being continuous from the place of shipment to the place of destination; and no break of bulk, stoppage, or interruption made by such common carrier shall prevent the carriage of freights from being and being treated as one continuous carriage from the place of shipment to the place of destination, unless such break, stoppage, or interruption was made in good faith for some necessary purpose, and without any intent to avoid or unnecessarily interrupt such continuous carriage or to evade any of the provisions of this act.

Continuous carriage of freights not to be unnecessarily interrupted.

SEC. 8. That in case any common carrier subject to the provisions of this act shall do, cause to be done, or permit to be done any act, matter, or thing in this act prohibited or declared to be unlawful, or shall omit to do any act, matter, or thing in this act required to be done, such common carrier shall be liable to the person or persons injured thereby for the full amount of damages sustained in consequence of any such violation of the provisions of this act, together with a reasonable counsel or attorney's fee, to be fixed by the court in every case of recovery, which attorney's fee shall be taxed and collected as part of the costs in the case.

Liability of common carriers for damages.

SEC. 9. That any person or persons claiming to be damaged by any common carrier subject to the provisions of this act may either make complaint to the Commission as herein-after provided for, or may bring suit in his or their own behalf for the recovery of the damages for which such common carrier may be liable under the provisions of this act, in any district or circuit court of the United States of competent jurisdiction; but such person or persons shall not have the right to pursue both of said remedies, and must in each case elect which one of the two methods of procedure herein provided for he or they will adopt. In any such action brought

Persons claiming to be damaged may complain to Commission or bring suit in United States courts.

Officers, etc., of defendant may be compelled to testify.

for the recovery of damages the court before which the same shall be pending may compel any director, officer, receiver, trustee, or agent of the corporation or company defendant in such suit to attend, appear, and testify in such case, and may compel the production of the books and papers of such corporation or company party to any such suit; the claim that any such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such witness from testifying, but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding.

Penalties for violations of act by carriers, their officers or agents: Fine and imprisonment

SEC. 10. (*As amended.*) That any common carrier subject to the provisions of this act, or, whenever such common carrier is a corporation, any director or officer thereof, or any receiver, trustee, lessee, agent, or person, acting for or employed by such corporation, who, alone or with any other corporation, company, person, or party, shall willfully do or cause to be done, or shall willingly suffer or permit to be done, any act, matter, or thing in this act prohibited or declared to be unlawful, or who shall aid or abet therein, or shall willfully omit or fail to do any act, matter, or thing in this act required to be done, or shall cause or willingly suffer or permit any act, matter, or thing so directed or required by this act to be done not to be so done, or shall aid or abet any such omission or failure, or shall be guilty of any infraction of this act, or shall aid or abet therein, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any district court of the United States within the jurisdiction of which such offense was committed, be subject to a fine of not to exceed five thousand dollars for each offense: *Provided*, That if the offense for which any person shall be convicted as aforesaid shall be an unlawful discrimination in rates, fares, or charges, for the transportation of passengers or property, such person shall, in addition to the fine hereinbefore provided for, be liable to imprisonment in the penitentiary for a term of not exceeding two years, or both such fine and imprisonment, in the discretion of the court.

Penalties for false billing, etc., by carriers, their officers or agents: Fine and imprisonment.

Any common carrier subject to the provisions of this act, or, whenever such common carrier is a corporation, any officer or agent thereof, or any person acting for or employed by such corporation, who, by means of false billing, false classification, false weighing, or false report of weight, or by any other device or means, shall knowingly and willfully assist, or shall willingly suffer or permit any person or persons to obtain transportation for property at less than the regular rates then established and in force on the line of transportation of such common carrier, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any court of the United States of competent jurisdiction within the district in which such offense was committed, be subject to a fine of not exceeding five thousand dollars, or imprisonment in the penitentiary for a term of not exceeding two years, or both, in the discretion of the court, for each offense.

Penalties for false billing, etc., by shippers and other persons: Fine and imprisonment.

Any person and any officer or agent of any corporation or company who shall deliver property for transportation to any common carrier subject to the provisions of this act, or for whom as consignor or consignee any such carrier shall

transport property, who shall knowingly and willfully, by false billing, false classification, false weighing, false representation of the contents of the package, or false report of weight, or by any other device or means, whether with or without the consent or connivance of the carrier, its agent or agents, obtain transportation for such property at less than the regular rates then established and in force on the line of transportation, shall be deemed guilty of fraud, which is hereby declared to be a misdemeanor, and shall, upon conviction thereof in any court of the United States of competent jurisdiction within the district in which such offense was committed, be subject for each offense to a fine of not exceeding five thousand dollars or imprisonment in the penitentiary for a term of not exceeding two years, or both, in the discretion of the court.

If any such person, or any officer or agent of any such corporation or company, shall, by payment of money or other thing of value, solicitation, or otherwise, induce any common carrier subject to the provisions of this act, or any of its officers or agents, to discriminate unjustly in his, its, or their favor as against any other consignor or consignee in the transportation of property, or shall aid or abet any common carrier in any such unjust discrimination, such person or such officer or agent of such corporation or company shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any court of the United States of competent jurisdiction within the district in which such offense was committed, be subject to a fine of not exceeding five thousand dollars, or imprisonment in the penitentiary for a term of not exceeding two years, or both, in the discretion of the court, for each offense; and such person, corporation, or company shall also, together with said common carrier, be liable, jointly or severally, in an action on the case to be brought by any consignor or consignee discriminated against in any court of the United States of competent jurisdiction for all damages caused by or resulting therefrom.

Penalties for inducing common carriers to discriminate unjustly. Fine and imprisonment. Joint liability with carrier for damages.

SEC. 11. That a Commission is hereby created and established to be known as the Inter-State Commerce Commission, which shall be composed of five Commissioners, who shall be appointed by the President, by and with the advice and consent of the Senate. The Commissioners first appointed under this act shall continue in office for the term of two, three, four, five, and six years, respectively, from the first day of January, anno Domini eighteen hundred and eighty-seven, the term of each to be designated by the President; but their successors shall be appointed for terms of six years, except that any person chosen to fill a vacancy shall be appointed only for the unexpired time of the Commissioner whom he shall succeed. Any Commissioner may be removed by the President for inefficiency, neglect of duty, or malfeasance in office. Not more than three of the Commissioners shall be appointed from the same political party. No person in the employ of or holding any official relation to any common carrier subject to the provisions of this act, or owning stock or bonds thereof, or who is in any manner pecuniarily interested therein, shall enter upon the duties

Interstate Commerce Commissioners—how appointed.

Terms of Commissioners.

of or hold such office. Said Commissioners shall not engage in any other business, vocation, or employment. No vacancy in the Commission shall impair the right of the remaining Commissioners to exercise all the powers of the Commission.

Power of Commission to inquire into business of carriers.

SEC. 12 (as amended). That the Commission hereby created shall have authority to inquire into the management of the business of all common carriers subject to the provisions of this act, and shall keep itself informed as to the manner and method in which the same is conducted, and shall have the right to obtain from such common carriers full and complete information necessary to enable the Commission to perform the duties and carry out the objects

Commission required to enforce the provisions of the act.

for which it was created; and the Commission is hereby authorized and required to execute and enforce the provisions of this act; and, upon the request of the Commission, it shall be the duty of any district attorney of the United States to whom the Commission may apply to institute in the proper court and to prosecute under the direction of the Attorney-General of the United States all necessary proceedings for the enforcement of the provisions of this act and for the punishment of all violations thereof, and

Proceedings.

Costs, etc., of prosecutions.

the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States; and for the purposes of this act the Commission shall have power to require, by subpoena, the attendance and testimony of witnesses and the production of all books, papers, tariffs, contracts, agreements, and documents relating to any matter under investigation.

Power of Commission to require attendance and testimony of witnesses and production of documentary evidence.

Attendance of witnesses from any place in United States.

Disobedience to subpoenas issued by Commission.

Such attendance of witnesses, and the production of such documentary evidence, may be required from any place in the United States, at any designated place of hearing. And in case of disobedience to a subpoena the Commission, or any party to a proceeding before the Commission, may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of books, papers, and documents under the provisions of this section.

Power of U. S. circuit courts to order disobedient witnesses to appear and testify or punish for contempt.

And any of the circuit courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any common carrier subject to the provisions of this act, or other person, issue an order requiring such common carrier or other person to appear before said Commission (and produce books and papers if so ordered) and give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof. The claim that any such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such witness from testifying; but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding.

Testimony of witness not to be used against him in criminal proceeding.

Testimony by deposition.

The testimony of any witness may be taken, at the instance of a party in any proceeding or investigation depending before the Commission, by deposition, at any time after a cause or proceeding is at issue on petition and an-

swer. The Commission may also order testimony to be taken by deposition in any proceeding or investigation pending before it, at any stage of such proceeding or investigation. Such depositions may be taken before any judge of any court of the United States, or any commissioner of a circuit, or any clerk of a district or circuit court, or any chancellor, justice, or judge of a supreme or superior court, mayor or chief magistrate of a city, judge of a county court, or court of common pleas of any of the United States, or any notary public, not being of counsel or attorney to either of the parties nor interested in the event of the proceeding or investigation. Reasonable notice must first be given in writing by the party or his attorney proposing to take such deposition to the opposite party or his attorney of record, as either may be nearest, which notice shall state the name of the witness and the time and place of the taking of his deposition. Any person may be compelled to appear and depose, and to produce documentary evidence, in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the Commission as hereinbefore provided.

Witnesses may be compelled to appear and depose.

Every person deposing as herein provided shall be cautioned and sworn (or affirm, if he so request) to testify the whole truth, and shall be carefully examined. His testimony shall be reduced to writing by the magistrate taking the deposition, or under his direction, and shall, after it has been reduced to writing, be subscribed by the deponent.

Depositions, how taken.

If a witness whose testimony may be desired to be taken by deposition be in a foreign country, the deposition may be taken before an officer or person designated by the Commission, or agreed upon by the parties by stipulation in writing, to be filed with the Commission. All depositions must be promptly filed with the Commission.

Depositions, how taken in foreign countries.

Filing of depositions.

Witnesses whose depositions are taken pursuant to this act, and the magistrate or other officer taking the same, shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

Fees for deposing witnesses.

SEC. 13. That any person, firm, corporation, or association, or any mercantile, agricultural, or manufacturing society, or any body politic, or municipal organization complaining of anything done or omitted to be done by any common carrier subject to the provisions of this act in contravention of the provisions thereof, may apply to said Commission by petition, which shall briefly state the facts; whereupon a statement of the charges thus made shall be forwarded by the Commission to such common carrier, who shall be called upon to satisfy the complaint or to answer the same in writing within a reasonable time, to be specified by the Commission. If such common carrier, within the time specified, shall make reparation for the injury alleged to have been done, said carrier shall be relieved of liability to the complainant only for the particular violation of law thus complained of. If such carrier shall not satisfy the complaint within the time specified, or there shall appear to be any reasonable ground for investigating said complaint,

Complaints to Commission. How and by whom made.

Reparation by carriers before investigation.

Investigations
by the Commis-
sion.

it shall be the duty of the Commission to investigate the matters complained of in such manner and by such means as it shall deem proper.

Said Commission shall in like manner investigate any complaint forwarded by the railroad commissioner or railroad commission of any State or Territory, at the request of such commissioner or commission, and may institute any inquiry on its own motion in the same manner and to the same effect as though complaint had been made.

No complaint shall at any time be dismissed because of the absence of direct damage to the complainant.

Findings of
Commission pri-
ma facie evidence
in judicial pro-
ceedings.

SEC. 14. (*As amended.*) That whenever an investigation shall be made by said Commission, it shall be its duty to make a report in writing in respect thereto, which shall include the findings of fact upon which the conclusions of the Commission are based, together with its recommendation as to what reparation, if any, should be made by the common carrier to any party or parties who may be found to have been injured; and such findings so made shall thereafter, in all judicial proceedings, be deemed prima facie evidence as to each and every fact found.

All reports of investigations made by the Commission shall be entered of record, and a copy thereof shall be furnished to the party who may have complained, and to any common carrier that may have been complained of.

Reports and
decisions. Au-
thorized publica-
tion to be com-
petent evidence.

The Commission may provide for the publication of its reports and decisions in such form and manner as may be best adapted for public information and use, and such authorized publications shall be competent evidence of the reports and decisions of the Commission therein contained, in all courts of the United States, and of the several States, without any further proof or authentication thereof. The Commission may also cause to be printed for early distribution its annual reports.

Publication
and distribution
of annual reports
of Commission.

SEC. 15. That if in any case in which an investigation shall be made by said Commission it shall be made to appear to the satisfaction of the Commission, either by the testimony of witnesses or other evidence, that anything has been done or omitted to be done in violation of the provisions of this act, or of any law cognizable by said Commission, by any common carrier, or that any injury or damage has been sustained by the party or parties complaining, or by other parties aggrieved in consequence of any such violation, it shall be the duty of the Commission to forthwith cause a copy of its report in respect thereto to be delivered to such common carrier, together with a notice to said common carrier to cease and desist from such violation, or to make reparation for the injury so found to have been done, or both, within a reasonable time, to be specified by the Commission; and if, within the time specified, it shall be made to appear to the Commission that such common carrier has ceased from such violation of law, and has made reparation for the injury found to have been done, in compliance with the report and notice of the Commission, or to the satisfaction of the party complaining, a statement to that effect shall be entered of record by the

Notice to com-
mon carrier to
cease from viola-
tion of act.

Compliance
with notice to
cease from viola-
tion of act. Rep-
aration.

Commission, and the said common carrier shall thereupon be relieved from further liability or penalty for such particular violation of law.

SEC. 16. (*As amended.*) That whenever any common carrier, as defined in and subject to the provisions of this act, shall violate, or refuse or neglect to obey or perform any lawful order or requirement of the Commission created by this act, not founded upon a controversy requiring a trial by jury, as provided by the seventh amendment to the Constitution of the United States, it shall be lawful for the Commission, or for any company or person interested in such order or requirement, to apply in a summary way, by petition, to the circuit court of the United States sitting in equity in the judicial district in which the common carrier complained of has its principal office, or in which the violation or disobedience of such order or requirement shall happen, alleging such violation or disobedience, as the case may be; and the said court shall have power to hear and determine the matter, on such short notice to the common carrier complained of as the court shall deem reasonable; and such notice may be served on such common carrier, his or its officers, agents, or servants in such manner as the court shall direct; and said court shall proceed to hear and determine the matter speedily as a court of equity, and without the formal pleadings and proceedings applicable to ordinary suits in equity, but in such manner as to do justice in the premises; and to this end such court shall have power, if it think fit, to direct and prosecute in such mode and by such persons as it may appoint, all such inquiries as the court may think needful to enable it to form a just judgment in the matter of such petition; and on such hearing the findings of fact in the report of said Commission shall be prima facie evidence of the matters therein stated; and if it be made to appear to such court, on such hearing or on report of any such person or persons, that the lawful order or requirement of said Commission drawn in question has been violated or disobeyed, it shall be lawful for such court to issue a writ of injunction or other proper process, mandatory or otherwise, to restrain such common carrier from further continuing such violation or disobedience of such order or requirement of said Commission, and enjoining obedience to the same; and in case of any disobedience of any such writ of injunction or other proper process, mandatory or otherwise, it shall be lawful for such court to issue writs of attachment, or any other process of said court incident or applicable to writs of injunction or other proper process, mandatory or otherwise, against such common carrier, and if a corporation, against one or more of the directors, officers, or agents of the same, or against any owner, lessee, trustee, receiver, or other person failing to obey such writ of injunction or other proper process, mandatory or otherwise; and said court may, if it shall think fit, make an order directing such common carrier or other person so disobeying such writ of injunction or other proper process, mandatory or otherwise, to pay such sum of money, not exceeding for each carrier or person in default the sum of five

Petition to United States courts in cases of disobedience to order of Commission.

Power of United States courts to hear and determine cases of disobedience.

Writs of injunction or other process against carriers in cases of disobedience.

Punishment for refusal to obey writs of injunction or other proper process: Fine.

hundred dollars for every day, after a day to be named in the order, that such carrier or other person shall fail to obey such injunction or other proper process, mandatory or otherwise; and such moneys shall be payable as the court shall direct, either to the party complaining or into court, to abide the ultimate decision of the court, or into the Treasury; and payment thereof may, without prejudice to any other mode of recovering the same, be enforced by attachment or order in the nature of a writ of execution, in like manner as if the same had been recovered by a final decree in personam in such court. When the subject in dispute shall be of the value of two thousand dollars or more, either party to such proceeding before said court may appeal to the Supreme Court of the United States, under the same regulations now provided by law in respect of security for such appeal; but such appeal shall not operate to stay or supersede the order of the court or the execution of any writ or process thereon; and such court may, in every such matter, order the payment of such costs and counsel fees as shall be deemed reasonable. Whenever any such petition shall be filed or presented by the Commission it shall be the duty of the district attorney, under the direction of the Attorney-General of the United States, to prosecute the same; and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

Appeals to Supreme Court of United States.

If the matters involved in any such order or requirement of said Commission are founded upon a controversy requiring a trial by jury, as provided by the seventh amendment to the Constitution of the United States, and any such common carrier shall violate or refuse or neglect to obey or perform the same, after notice given by said Commission as provided in the fifteenth section of this act, it shall be lawful for any company or person interested in such order or requirement to apply in a summary way by petition to the circuit court of the United States sitting as a court of law in the judicial district in which the carrier complained of has its principal office, or in which the violation or disobedience of such order or requirement shall happen, alleging such violation or disobedience, as the case may be; and said court shall by its order then fix a time and place for the trial of said cause, which shall not be less than twenty nor more than forty days from the time said order is made, and it shall be the duty of the marshal of the district in which said proceeding is pending to forthwith serve a copy of said petition, and of said order, upon each of the defendants, and it shall be the duty of the defendants to file their answers to said petition within ten days after the service of the same upon them as aforesaid. At the trial the findings of fact of said Commission as set forth in this report shall be prima facie evidence of the matters therein stated, and if either party shall demand a jury or shall omit to waive a jury the court shall, by its order, direct the marshal forthwith to summon a jury to try the cause; but if all the parties shall waive a jury in writing, then the court shall try the issues in said cause and render its judgment thereon. If the sub-

Petition to United States courts in cases of disobedience when trial by jury is necessary.

Trial by jury.

Trial by court.

ject in dispute shall be of the value of two thousand dollars or more either party may appeal to the Supreme Court of the United States, under the same regulations now provided by law in respect to security for such appeal; but such appeal must be taken within twenty days from the day of the rendition of the judgment of said circuit court. If the judgment of the circuit court shall be in favor of the party complaining, he or they shall be entitled to recover a reasonable counsel or attorney's fee, to be fixed by the court, which shall be collected as part of the costs in the case. For the purposes of this act, excepting its penal provisions, the circuit courts of the United States shall be deemed to be always in session.

Appeals to Supreme Court of the United States.

Counsel or attorney's fees.

SEC. 17. (*As amended.*) That the Commission may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice. A majority of the Commission shall constitute a quorum for the transaction of business, but no Commissioner shall participate in any hearing or proceeding in which he has any pecuniary interest. Said Commission may, from time to time, make or amend such general rules or orders as may be requisite for the order and regulation of proceedings before it, including forms of notices and the service thereof, which shall conform, as nearly as may be, to those in use in the courts of the United States. Any party may appear before said Commission and be heard, in person or by attorney. Every vote and official act of the Commission shall be entered of record, and its proceedings shall be public upon the request of either party interested. Said Commission shall have an official seal, which shall be judicially noticed. Either of the members of the Commission may administer oaths and affirmations and sign subpoenas.

Interstate Commerce Commission. Form of procedure.

Official seal.

SEC. 18. (*As amended.*) That each Commissioner shall receive an annual salary of seven thousand five hundred dollars, payable in the same manner as the judges of the courts of the United States. The Commission shall appoint a secretary, who shall receive an annual salary of three thousand five hundred dollars, payable in like manner. The Commission shall have authority to employ and fix the compensation of such other employees as it may find necessary to the proper performance of its duties. Until otherwise provided by law, the Commission may hire suitable offices for its use, and shall have authority to procure all necessary office supplies. Witnesses summoned before the Commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

Salaries of Commissioners.

Secretary—how appointed; salary.

Offices and supplies.

Witnesses' fees.

All of the expenses of the Commission, including all necessary expenses for transportation incurred by the Commissioners, or by their employees under their orders, in making any investigation, or upon official business in any other places than in the city of Washington, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the chairman of the Commission.

Expenses of the Commission—how paid.

SEC. 19. That the principal office of the Commission shall be in the city of Washington, where its general sessions

Principal office of the Commission.

shall be held; but whenever the convenience of the public or the parties may be promoted or delay or expense prevented thereby, the Commission may hold special sessions in any part of the United States. It may, by one or more of the Commissioners, prosecute any inquiry necessary to its duties, in any part of the United States, into any matter or question of fact pertaining to the business of any common carrier subject to the provisions of this act.

Sessions of the Commission.

Carriers subject to the act must render full annual reports to Commission.

Commission may prescribe methods of keeping accounts.

Annual reports of the Commission to Congress.

Persons and property that may be carried free or at reduced rates.

SEC. 20. That the Commission is hereby authorized to require annual reports from all common carriers subject to the provisions of this act, to fix the time and prescribe the manner in which such reports shall be made, and to require from such carriers specific answers to all questions upon which the Commission may need information. Such annual reports shall show in detail the amount of capital stock issued, the amounts paid therefor, and the manner of payment for the same; the dividends paid, the surplus fund, if any, and the number of stockholders; the funded and floating debts and the interest paid thereon; the cost and value of the carrier's property, franchises, and equipments; the number of employees and the salaries paid each class; the amounts expended for improvements each year, how expended, and the character of such improvements; the earnings and receipts from each branch of business and from all sources; the operating and other expenses; the balances of profit and loss; and a complete exhibit of the financial operations of the carrier each year, including an annual balance-sheet. Such reports shall also contain such information in relation to rates or regulations concerning fares or freights, or agreements, arrangements, or contracts with other common carriers, as the Commission may require; and the said Commission may, within its discretion, for the purpose of enabling it the better to carry out the purposes of this act, prescribe (if in the opinion of the Commission it is practicable to prescribe such uniformity and methods of keeping accounts) a period of time within which all common carriers subject to the provisions of this act shall have, as near as may be, a uniform system of accounts, and the manner in which such accounts shall be kept.

SEC. 21. (*As amended.*) That the Commission shall, on or before the first day of December in each year, make a report, which shall be transmitted to Congress, and copies of which shall be distributed as are the other reports transmitted to Congress. This report shall contain such information and data collected by the Commission as may be considered of value in the determination of questions connected with the regulation of commerce, together with such recommendations as to additional legislation relating thereto as the Commission may deem necessary; and the names and compensation of the persons employed by said Commission.

SEC. 22. (*As amended.*) That nothing in this act shall prevent the carriage, storage, or handling of property free or at reduced rates for the United States, State, or municipal governments, or for charitable purposes, or to or from fairs and expositions for exhibition thereat, or the free carriage

of destitute and homeless persons transported by charitable societies, and the necessary agents employed in such transportation, or the issuance of mileage, excursion, or commutation passenger tickets; nothing in this act shall be construed to prohibit any common carrier from giving reduced rates to ministers of religion, or to municipal governments for the transportation of indigent persons, or to inmates of the National Homes or State Homes for Disabled Volunteer Soldiers, and of Soldiers' and Sailors' Orphan Homes, including those about to enter and those returning home after discharge, under arrangements with the boards of managers of said homes; nothing in this act shall be construed to prevent railroads from giving free carriage to their own officers and employees, or to prevent the principal officers of any railroad company or companies from exchanging passes or tickets with other railroad companies for their officers and employees; and nothing in this act contained shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this act are in addition to such remedies: *Provided*, That no pending litigation shall in any way be affected by this act.

Mileage, excursion, or commutation passenger tickets.

Passes and free transportation to officers and employees of railroad companies.

Pending litigation not affected by act.

(*New section.*) That the circuit and district courts of the United States shall have jurisdiction upon the relation of any person or persons, firm, or corporation, alleging such violation by a common carrier, of any of the provisions of the act to which this is a supplement and all acts amendatory thereof, as prevents the relator from having interstate traffic moved by said common carrier at the same rates as are charged, or upon terms or conditions as favorable as those given by said common carrier for like traffic under similar conditions to any other shipper, to issue a writ or writs of mandamus against said common carrier, commanding such common carrier to move and transport the traffic, or to furnish cars or other facilities for transportation for the party applying for the writ: *Provided*, That if any question of fact as to the proper compensation to the common carrier for the service to be enforced by the writ is raised by the pleadings, the writ of peremptory mandamus may issue, notwithstanding such question of fact is undetermined, upon such terms as to security, payment of money into the court, or otherwise, as the court may think proper, pending the determination of the question of fact: *Provided*, That the remedy hereby given by writ of mandamus shall be cumulative, and shall not be held to exclude or interfere with other remedies provided by this act or the act to which it is a supplement.

Jurisdiction of United States courts to issue writs of peremptory mandamus commanding the movement of interstate traffic or the furnishing of cars or other transportation facilities.

**RULES OF PRACTICE AND FORMS IN CASES AND PROCEEDINGS
BEFORE THE COMMISSION.**

INTERSTATE COMMERCE COMMISSION.

At a general session of the Interstate Commerce Commission, held at its office in the city of Washington, on the 15th day of December, 1891, it was—

Ordered, That the following revised and amended rules of practice in cases and proceedings before the Commission be, and the same are hereby, established, to take effect from and after this date. That the secretary cause a suitable number of copies thereof to be printed.

A true copy of the record.

Attest:

[L. S.]

EDWARD A. MOSELEY,
Secretary.

**RULES OF PRACTICE AND FORMS IN CASES AND PROCEEDINGS BE-
FORE THE COMMISSION.**

I.—Public sessions.

The general sessions of the Commission for hearing contested cases will be held at its office in the Sun building, No. 1315 F street NW., Washington, D. C., on such days and at such hour as the Commission may designate.

When special sessions are held at other places, such regulations as may be necessary will be made by the Commission.

Sessions for receiving, considering, and acting upon petitions, applications, and other communications, and also for considering and acting upon any business of the Commission other than contested cases, will be held at its said office at 11 o'clock a. m. on Monday of each week when the Commission is at Washington, and on such other days as the chairman may direct.

II.—Parties.

Where a complaint relates to the practices of a single carrier only, no other need be made a party; but if it relates to matters in which two or more carriers, doing business under a common control, management, or arrangement for a continuous carriage or shipment, are interested, all the carriers participating in such carriage or shipment must be made parties.

A complainant may include in one proceeding several carriers or lines of carriers, separately operated, when the subject-matter of the complaint involves substantially the same alleged violations of law by such several carriers or lines.

Persons or carriers not parties may petition in any proceeding for leave to intervene and be heard therein. Such petition shall be duly verified, and shall set forth the petitioner's interest in the proceeding. Leave granted on such application shall entitle the intervenor to appear and be treated as a party to the proceeding; but no person not a carrier who intervenes in behalf of the defense, shall have the right to file an answer or otherwise become a party, except to have notice of and appear at the taking of testimony, produce and cross-examine witnesses, and be heard in person or by counsel on the argument of the case.

III.—*Complaints.*

Complaints of unlawful acts or practices by any common carrier, made in pursuance of section 13 of the act, must be by petition, setting forth briefly the facts claimed to constitute a violation of the law, and must be verified by the petitioner or by some officer or agent of the corporation, society, organization, or other body making the complaint, to the effect that the allegations of the petition are true to the knowledge or belief of the affiant.

The name of the carrier or carriers complained against must be stated in full, and the address of the petitioner, with the name and address of his attorney or counsel, if any, must appear upon the petition. The complainant must furnish as many copies of the petition as there may be parties complained against to be served.

The Commission will cause a copy of the petition, with notice to satisfy or answer the same within a specified time, to be served, personally or by mail, in its discretion upon each carrier complained against.

IV.—*Answers.*

A carrier complained against must answer within twenty days, unless extended, from the date of the notice, but the Commission may, in a particular case, require the answer to be served within a shorter time. The time prescribed in any case may be extended, upon good cause shown, by special order of the Commission. The original answer must be filed with the secretary of the Commission at its office in Washington, and a copy thereof at the same time served, personally or by mail, upon the complainant, who must forthwith notify the secretary of its receipt. The answer must admit or deny the material allegations of the petition, and may set forth any additional facts claimed to be material to the issue. The answer must be verified in the same manner as the petition. If a carrier complained against shall make satisfaction before answering, a written acknowledgment thereof must be filed by the complainant, and in that case the fact of satisfaction, without other matter may be set forth in the answer. If satisfaction be made after the filing and service of an answer, a supplemental answer, setting forth the fact of satisfaction, may be filed and served.

V.—*Notice in nature of demurrer.*

A carrier complained against who deems the petition insufficient to show a breach of legal duty, may, instead of answering, or formally demurring, serve on the complainant notice of hearing on the petition; and in such case the facts stated in the petition will be deemed admitted. A copy of the notice must at the same time be filed with the secretary

of the Commission. The filing of an answer, however, will not be deemed an admission of the sufficiency of the petition, but a motion to dismiss for insufficiency may be made at the hearing.

VI.—*Service of papers.*

Copies of notices or other papers must be served upon the adverse parties, personally or by mail; and when any party has appeared by attorney, service upon such attorney shall be deemed proper service upon the party.

VII.—*Affidavits.*

Affidavits to any pleading or application may be made before any officer of the United States, or of any State or Territory, authorized to administer oaths.

VIII.—*Amendments.*

Upon application of any party, amendments to any petition or answer, in any proceeding or investigation, may be allowed by the Commission in its discretion.

IX.—*Adjournments and extensions of time.*

Adjournments and extensions of time may be granted upon the application of any party, in the discretion of the Commission.

X.—*Stipulations.*

The parties to any proceeding or investigation before the Commission may, by stipulation in writing filed with the secretary, agree upon the facts, or any portion thereof involved in the controversy, which stipulation shall be regarded and used as evidence on the hearing. It is desired that the facts be thus agreed upon whenever practicable.

XI.—*Hearings.*

Upon issue being joined by the service of an answer or notice of hearing on the petition, the Commission will assign a time and place for hearing the case, which will be at its office in Washington, unless otherwise ordered. Witnesses will be examined orally before the Commission, unless their testimony be taken or the facts be agreed upon as provided for in these rules. The complainant must in all cases establish the facts alleged to constitute a violation of the law, unless the carrier complained against admits the same or fails to answer the petition. Facts alleged in the answer must also be proved by the carrier, unless admitted by the petitioner.

In case of failure to answer, the Commission will take such proof of the facts as may be deemed proper and reasonable, and make such order thereon as the circumstances of the case appear to require.

XII.—*Depositions.*

The testimony of any witness may be taken by deposition, at the instance of a party, in any proceeding or investigation before the Commission, and at any time after the same is at issue. The Commission may also order testimony to be taken by deposition, in any proceeding or investigation pending before it, at any stage of such proceeding or investigation. Such depositions may be taken before any judge of any

court of the United States, or any commissioner of a circuit, or any clerk of a district or circuit court, or any chancellor, justice, or judge of a supreme or superior court, mayor or chief magistrate of a city, judge of a county court, or court of common pleas of any of the United States, or any notary public, not being of counsel or attorney to either of the parties, or otherwise interested in the proceeding or investigation. Reasonable notice must be given in writing by the party or his attorney proposing to take such deposition to the opposite party or his attorney of record, which notice shall state the name of the witness and the time and place of the taking of his deposition, and a copy of such notice shall be filed with the secretary. When testimony is to be taken on behalf of a common carrier in any proceeding instituted by the Commission on its own motion, reasonable notice thereof in writing must be given by such carrier to the Commission itself, or to such person as may have been previously designated by the Commission to be served with such notice.

Every person whose deposition is taken shall be cautioned and sworn (or may affirm, if he so request) to testify the whole truth, and shall be carefully examined. His testimony shall be reduced to writing, which may be typewriting, by the magistrate taking the deposition, or under his direction, and shall, after it has been reduced to writing, be subscribed by the witness.

If a witness whose testimony may be desired to be taken by deposition be in a foreign country, the deposition may be taken before an officer or person designated by the Commission, or agreed upon by the parties by stipulation in writing to be filed with the secretary. All depositions must be promptly filed with the secretary.

XIII.—*Witnesses and subpoenas.*

Subpoenas requiring the attendance of witnesses from any place in the United States to any designated place of hearing for the purpose of taking the testimony of such witnesses orally before one or more members of the Commission, or by deposition before a magistrate authorized to take the same, will, upon the application of either party, or upon the order of the Commission directing the taking of such testimony, be issued by any member of the Commission.

Subpoenas for the production of books, papers, or documents (unless directed to issue by the Commission upon its own motion) will only be issued upon application in writing; and when it is sought to compel witnesses, not parties to the proceeding, to produce such documentary evidence, the application must be sworn to and must specify, as nearly as may be, the books, papers, or documents desired; that the same are in the possession of the witness or under his control; and also, by facts stated, show that they contain material evidence necessary to the applicant. Applications to compel a party to the proceeding to produce books, papers, or documents need only set forth in a general way the books, papers or documents desired to be produced, and that the applicant believes they will be of service in the determination of the case.

Witnesses whose testimony is taken orally or by deposition, and the magistrate or other officer taking such depositions, are severally entitled to the same fees as are paid for like services in the courts of the United States.*

* Fees of witnesses are fixed by law at \$1.50 for each day's attendance at the place of hearing or of taking depositions, and 5 cents per mile for going to said place from his place of residence and 5 cents per mile for returning therefrom.

XIV.—*Proposed findings.*

Upon the final submission of a case, each party must, unless otherwise directed, prepare and submit for the consideration of the Commission, proposed findings, embracing the material facts and propositions of law claimed to be established by the evidence.

XV.—*Rehearings.*

Applications for reopening a case after final submission, or for rehearing after decision made by the Commission, must be by petition, and must state specifically the grounds upon which the application is based. If such application be to reopen the case for further evidence, the nature and purpose of such evidence must be briefly stated, and the same must not be merely cumulative. If the application be for a rehearing, the petition must specify the findings of fact and conclusions of law claimed to be erroneous, with a brief statement of the grounds of error; and when any recommendation, decision, or order of the Commission is sought to be reversed, changed, or modified on account of facts and circumstances arising subsequent to the hearing, or of consequences resulting from compliance with such recommendation, decision, or order which are claimed to justify a reconsideration of the case, the matters relied upon by the applicant must be fully set forth. Such petition must be duly verified, and a copy thereof, with notice of the time and place when the application will be made, must be served upon the adverse party at least ten days before the time named in such notice.

XVI.—*Printing of pleadings, etc.*

For convenience in reading and filing, it is requested that pleadings, depositions, briefs, and other papers of importance be printed or in type-writing whenever practicable, and that, when not printed, only one side of the paper be used.

XVII.—*Copies.*

Copies of any petition, complaint, or answer in any matter or proceeding before the Commission, or of any order, decision, or opinion by the Commission, will be furnished without charge, upon application to the secretary by any person or carrier party to the proceeding.

Copy of testimony will be furnished in the discretion of, and upon such terms as, the Commission shall prescribe.

XVIII.—*Address of the Commission.*

All complaints concerning anything done or omitted to be done by any common carrier, and all petitions or answers in any proceeding, or applications in relation thereto, and all letters and telegrams for the Commission, must be addressed to Washington, D. C., unless otherwise specially directed.

FORMS.

- | | |
|--|--|
| <p>No. 1.—Complaint against a single carrier.
 No. 2.—Complaint against joint or connecting carriers.
 No. 3.—Notice to answer.
 No. 4.—Notice to complainant.
 No. 5.—Answer.</p> | <p>No. 6.—Notice by carrier under Rule V.
 No. 7.—Acknowledgment of answer.
 No. 8.—Notice of hearing.
 No. 9.—Subpoena.
 No. 10.—Notice of taking depositions under Rule XII.</p> |
|--|--|

These forms may be used in cases to which they are applicable, with such alterations as the circumstances may render necessary.

No. 1.

Complaint against a single carrier.

INTERSTATE COMMERCE COMMISSION.

A. B.
against
 THE ——— RAILROAD COMPANY. }

The petition of the above-named complainant respectfully shows:

- I. That (*here let complainant state his occupation and place of business*).
- II. That the defendant above named is a common carrier engaged in the transportation of passengers and property by railroad between points in the State of ——— and points in the State of ———, and as such common carrier is subject to the act to regulate commerce.
- III. That (*here state concisely the matters intended to be complained of. Continue numbering each succeeding paragraph as in Nos. I, II, and III.*)

Wherefore the petitioner prays that the defendant may be required to answer the charges herein, and that after due hearing and investigation an order be made commanding the defendant to cease and desist from said violations of the act to regulate commerce, and for such other and further order as the Commission may deem necessary in the premises. (*If reparation for any wrong or injury be desired, the petitioner should state the nature and extent of the reparation he deems proper.*)

Dated at ———, ———, 18—.

A. B.
 (*Complainant's signature.*)

STATE OF ———,
 County of ———, ss:

A. B., being duly sworn, says that he is the complainant in this proceeding, and that the matters set forth in the foregoing petition are true as he verily believes.

A. B.

Subscribed and sworn to before me this — day of ———, 189—.

C. D.,
Justice of the Peace,
 (*Or other officer authorized to administer oaths.*)

No. 2.

Complaint against joint or connecting carriers.

INTERSTATE COMMERCE COMMISSION.

A. B.
against
THE ——— RAILROAD COMPANY.

(Here set out in full the titles of the several
carriers complained against.)

The petition of the above-named complainant respectfully shows:

I. That (*here let complainant state his occupation and place of business*).

II. That the defendants above named are common carriers, and under a common control, management, or arrangement, for continuous carriage or shipment, are engaged in the transportation of passengers and property wholly by railroad (*or partly by railroad and partly by water, as the case may be*) between ———, in the State of ———, and ———, in the State of ———, and as such common carriers are subject to the act to regulate commerce.

(Then proceed as in Form No. 1.)

No. 3.

Notice to answer.

THE INTERSTATE COMMERCE COMMISSION,
Washington, D. C., ———, 189—.

To the ———, ———:

Enclosed please find a copy of a ——— petition filed against your company, embracing a statement of charges made by ——— under section 13 of the act to regulate commerce, approved February 4, 1887, and amended March 2, 1889.

You are hereby called upon to satisfy the complaint or to answer the same, in writing, within twenty days from this date.

For the Commission:

———,
Secretary.

No. 4.

Notice of complainant.

THE INTERSTATE COMMERCE COMMISSION,
Washington, D. C., ———, 189—.

———,
———:

Your petition against the ——— Company, under section 13 of the act to regulate commerce, approved February 4, 1887, and amended March 2, 1889, is received and placed on file.

A statement of the charges made has been forwarded to the carrier for satisfaction or answer within twenty days.

For the Commission:

———,
Secretary.

No. 5.

Answer.

INTERSTATE COMMERCE COMMISSION.

A. B.
against
 THE ——— RAILROAD COMPANY. }

The above-named defendant, for answer to the complaint in this proceeding, respectfully states—

I. That (*here follow the usual admissions, denials, and averments. Continue numbering each succeeding paragraph*).

Wherefore the defendant prays that the complaint in this proceeding be dismissed.

THE ——— RAILROAD COMPANY,
 By E. F.,

(*Title of officer.*)

STATE OF ———,
County of ———, ss:

E. F., being duly sworn, says that he is the ——— of the ——— Railroad Company, defendant in this proceeding, and that the foregoing answer is true as he verily believes.

E. F.

Subscribed and sworn to before me this — day of ———, 18—.

C. D.,
Justice of the Peace,
 (*Or other officer authorized to administer oaths*).

No. 6.

Notice by carrier under Rule V.

INTERSTATE COMMERCE COMMISSION.

A. B.
against
 THE ——— RAILROAD COMPANY. }

Notice is hereby given under Rule V of the Rules of Practice in proceedings before the Commission that a hearing is desired in this proceeding upon the facts as stated in the complaint.

THE ——— RAILROAD COMPANY,
 By E. F.,

(*Title of officer.*)

No. 7.

Acknowledgment of answer.

INTERSTATE COMMERCE COMMISSION,
 Washington, ———, 189—.

———,
 ———,
 ———;

The Commission acknowledges the receipt of an answer made by the ——— Railroad Company to the complaint filed against said company ——— by ———, and the same has been filed.

For the Commission:

Very respectfully,

———,
Secretary.

No. 8.

Notice of hearing.

INTERSTATE COMMERCE COMMISSION,
Washington, ———, 189—.

_____,
_____,
_____.

The case of _____ against the _____ Rail _____ Company _____ is assigned for
hearing _____, 189—, _____ a. m., at _____.

For the Commission:

_____,
Secretary.

No. 9.

Subpœna.

INTERSTATE COMMERCE COMMISSION.

To _____,
_____;

You are hereby required to appear before _____ in the matter of a complaint
of _____ against _____, as a witness on the part of _____, on the _____ day of _____,
189—, at _____ o'clock at _____, and bring with you then and there _____.

Dated _____.

[SEAL.]

_____,
Commissioner.

_____,
_____,
Attorney for _____.

[NOTICE.—Witness fees for attendance under this subpœna are to be paid by the
party at whose instance the witness is summoned, and every copy of this summons
for the witness must contain a copy of this notice.]

No. 10.

Notice of taking depositions under Rule XII.

INTERSTATE COMMERCE COMMISSION.

A. B.
against
THE _____ RAILROAD COMPANY. }

You are hereby notified that G. H. will be examined before C. D., a _____ (title of
officer or magistrate), at _____, on the _____ day of _____, 18—, at _____ o'clock in
the _____ noon, as a witness for the above-named complainant (or defendant, as the
case may be), according to act of Congress in such case made and provided, and the
rules of practice of the Interstate Commerce Commission; at which time and place
you are notified to be present and take part in the examination of the said witness.

Dated _____, _____, 18—.

I. J.

(Signature of complainant or defendant, or of counsel.)

To A. B., the above-named complainant (or The _____ Railroad Company, the above-
named defendant; or to K. L., counsel for the above-named complainant or defendant).

INDEX.

	Page.
ABSTRACT QUESTIONS	
opinions on.....	94
ACCIDENTS	
avoided by use of uniform coupler	338
from coupling and uncoupling cars	8
increased ratio in, to railroad employes	338
statistics of	8
to railroad employes	337
ACCOMMODATIONS	94
ACCOUNTS	
of carrier	94
uniformity of railway	66
ACT TO REGULATE COMMERCE	
abuses which it was designed to prevent	14
abuses resulting from failure to conform to	14
amendments to, of March 2, 1889	10
amendments to, recommended by Commission	68
carriers subject to, are corporations	16
civil proceedings in Federal courts to compel obedience to	15
Commission dependent on courts for efficient execution of	14
"common control management or arrangement"	86
construction of, as to filing rate schedules	239-270
construction of, as to form of rate schedules	239-270
construction of, as to publication of rate schedules	239-270
construction of, by courts	19, 21
devices adopted by carriers to avoid	12
duties imposed upon carriers by, frequently left to irresponsible agents	11
duties imposed upon Commission by	18
duty of Commission to investigate complaints	92
enacted a new standard of right and wrong	14
enforcing the	15
failure to discharge some duty required by	17
indictments framed by district attorney for violations of	13
imposition of penalties for infraction of	15
improvement in disposition of carriers to comply with	11
lack of authority of Commission under	50
line between criminal violation and error of judgment	18
practicable regulation under	85
principal object	51
questions arising between shippers and carriers	18
rates announced without compliance with	11
reasonable charges on coal	85
regulation of rates on import traffic	83
relative to connecting lines	42
requirements as to posting passenger rate sheets	265
requirements of, in matter of publication and filing of schedules	14
Section 1. Carriers and transportation subject to act	349
Railroad and transportation defined	348
Reasonable charges	17, 349
Section 2. Unjust discrimination	349
Section 3. Preference or advantage	11, 350
Facilities for interchange of traffic	89, 350
Discrimination between connecting lines	350

	Page
ACT TO REGULATE COMMERCE—Continued.	
Section 4. Long and short haul provision	17, 243, 350
Section 5. Pooling of freights and division of earnings	17, 350
Section 6. Printing, posting, and filing of rates, fares, and charges	13, 17, 254, 239, 270, 350, 351, 352
Notice of advances and reductions in rates, fares, and charges	351
Published rates not to be deviated from	351
Filing of contracts and agreements	352
Published joint rates not to be deviated from	352
Commission may prescribe forms of schedules	352
Penalties	352
Filing and publication of joint tariffs	352
Notice of advances and reductions in joint rates, fares, and charges	352
Section 7. Continuous carriage of freights	353
Section 8. Liability of common carriers for damages	353
Section 9. Persons claiming to be damaged may complain to Com- mission or bring suit in United States courts	353
Compulsory testimony	354
Section 10. Penalties	344
Section 11. Appointment and terms of Commissioners	355
Section 12. Power of Commissioners to make investigations	357
Duty of Commissioners to enforce the act	357
Compulsory testimony	357, 358
Taking and filing of depositions	358
Fees of witnesses	358
Section 13. Complaints to Commission	357
Section 14. Findings of the Commission, prima facie evidence	358
Publication of the reports and decisions of Commission	358
Section 15. Notice to carriers to cease and desist from violations, reparation for injuries; compliance	358
Section 16. Procedure for enforcement of orders of Commission in United States courts	15, 359
Section 17. Procedure before the Commission	361
Section 18. Salaries of Commissioners; secretary of Commission; expenses of Commission	361
Section 19. Principal office of Commission	361
Sessions of the Commission	352
Section 20. Annual reports of carriers; accounts of carriers	362
Section 21. Annual reports of the Commission to Congress	362
Section 22. Exceptive clauses	17, 362
New section. Power of United States courts to command the move- ment of traffic at equal rates; writ of mandamus may issue pending the determination of questions of fact	363
State railroad commission as complainant	92
tariffs published and filed by carriers subject to	13
section of	15, 16, 17
section	17, 49
through routes and through rates	89
undue or unreasonable advantages under, less frequent	11
unjust discrimination under, less frequent	11
violated by charging less than published rates	12
violations of fourth section caused by improperly constructed tariffs	243
where action of railway officials under, has been unsatisfactory	11
where plainest provisions of, are neglected	11
ADAMS, PROF. HENRY C	334
ADOPTING TARIFFS OF OTHER ROADS, ASSOCIATIONS, ETC	248
ADVANCES IN RATES	
Commission has not been given power to order	94
ADVANTAGES	
undue	17
ADVANTAGES OF BUSINESS LOCATION	
(See Location.)	94
AFFIDAVITS	
filed in support of petition for rehearing	94

	Page.
AGENT	
authority of	57
duties in routing freight	95
fraudulent acts of	58
instructions to, in regard to use of uniform bill of lading	62
principal should suffer rather than	16
station	57
terminal delivery by	95
carriers escape responsibility through neglect of duty by	12
AGENTS, SPECIAL	
local examinations by	11
AGREEMENTS	
for through billing and through rates	95
for through lines	95
for through rates	95
for trackage rights	95
for use of improved stock cars owned by shippers	95
AIKEN, S. C.	10
ALABAMA	4, 334
increase in operated mileage in	4
ALEXANDRIA AND FREDERICKSBURG RY. CO.	92
ALEXANDRIA AND WASHINGTON RY. CO.	92
ALEXANDER, IRWIN	302, 308
AMENDMENT	
Commission's experience confirms its opinion of necessity for	23
(See Complaint.)	95
AMENDMENTS	68
recommended by Commission	21, 68
AMERICAN JURISPRUDENCE	49
AMERICAN RAILWAY ACCOUNTING OFFICERS	
association of	66
ANSWER	
replication not allowed	95
ANSWERS OF CARRIERS TO PETITIONS FILED IN UNITED STATES CIR- CUIT COURTS	273
Atchison, Topeka and Santa Fé R. R. Co. <i>et al.</i>	277
Lshigh Valley R. R. Co.	286
Western and Atlantic R. R. Co.	293
Cincinnati, New Orleans and Texas Pacific Ry. Co.	294
Louisville and Nashville R. R. Co. <i>et al.</i>	295
Georgia R. R. Co.	295, 307
Detroit, Grand Haven and Milwaukee Ry. Co.	312
ANTHONY, COMMISSIONER	343
APPENDICES	
A.—Names and compensation of employes, together with a state- ment of appropriations and expenditures	69
B.—Statement of points decided by the Commission during the year ending November 30, 1891	81
Statement of important points decided by the Commission since its organization	91
C.—Methods of carriers in the construction, publication, and filing of rate schedules	237
D.—Petitions and answers in cases brought by the Commission in United States circuit courts for the enforcement of its orders	271
E.—Uniform bill of lading	315
F.—Convention of railroad commissioners	321
G.—Uniformity in safety appliances and heating of passenger cars	335
H.—The act to regulate commerce as amended	347
Rules of practice and forms in cases and proceedings before the Commission	364
APPLIANCES, SAFETY	337
(See Safety Appliances.)	
APPROPRIATION	
statement of	69
ARIZONA	343
ARKANSAS	7
ARRANGEMENT	95
(See Through routes and Through rates, etc.)	

	Page.
ASSOCIATION	
Central Traffic	30
Mississippi Valley Trunk Line	30
New England Freight	30
Southern Interstate	30
Southern Ry. and Steamship, classification	32
Western Freight	30
ASSOCIATION OF AMERICAN RAILWAY ACCOUNTING OFFICERS	66, 323
ASSOCIATIONS:	
call issued by the leading traffic	28
ATCHISON, KANS	269
ATCHISON, TOPEKA AND SANTA FÉ R. R.	342
ATCHISON, TOPEKA AND SANTA FÉ R. R. Co. 15, 19, 90, 273, 274, 275, 276, 277	298
ATHENS, GA	267
ATLANTA AND WEST POINT R. R.	289, 292, 294, 295, 296, 297, 298, 299, 301, 303
ATLANTA, GA	273, 274, 275, 276, 277
ATLANTIC AND PACIFIC R. R. Co.	10, 356, 360
ATTORNEY-GENERAL	
ATTORNEY-GENERAL OF THE UNITED STATES	
notified of failure to observe statute	10
AUGUSTA, GA	15, 289, 292, 294, 295, 296, 297, 298, 300, 301, 302
AUTHORITY FOR PUBLICATION OF JOINT TARIFF	245, 269
ATTORORITY TO MAKE THROUGH RATES	267
AUTOMATIC COUPLERS	5
BALL, DANIEL, The,	
case of	47
BALTIMORE AND OHIO R. R. Co.	83, 90, 342
BALTIMORE AND POTOMAC R. R. Co	92
BALTIMORE, MD	300
BALTIMORE STEAM PACKET Co	92
BARNETT, A. F	269
BARRELS	
charges on oil shipped in	37
disadvantage to shippers of oil in	38
transportation of petroleum oils in	95
BARSTOW, CAL	278
BASING POINTS	
system of making rates to and from	86
BATTLE CREEK, MICH	312
BAXTER, ED	302
BEAVER & Co	90
BEAVER, FREDERICK P	90
BEAVER MEADOW, PA	284, 287
BEIN, C. W	269
BILLING	
through	42
willful false	17
BILLING OF FREIGHT	
duties of carriers in regard to	96
BILLS OF LADING	
bill introduced in Congress in relation to	58
character of	55
compulsion under which shipper rests to accept conditions of	59
conditions of new	63
contract for carriage	55
contracts usually embodied in	55
erroneous or fraudulent	56
instructions to agents in regard to use of new	62
not negotiable	56
official uniform	65
proposed new	62
purports on its face to be a receipt	55
railroad company liable for value of false	57
shipper may introduce parol evidence to show he is not bound by	
conditions of	60
subject of, fully treated	54-65
symbolic transfer and delivery proper	56

	Page.
BILLS OF LADING	54-65
terms and conditions contained in	60
the modern	55
the transferee of	56
uniform	62, 315
uniform, not generally adopted by carriers	64
where first carrier issues	43
BONDED DEBT	96
(See Reasonable rates.)	
BOOKS, PAPERS, AND DOCUMENTS	
compulsory production of	95
BOSTON AND ALBANY R. R. Co	88
BOSTON AND MAINE R. R. Co	83
BOSTON FRUIT AND PRODUCE EXCHANGE	50, 86, 90
BOSTON, MASS.	11, 50, 91, 245, 246, 247, 273
BRAKES	5
continuous	338
BREWSTER	49
BRIDGE CHARGES	96
(See Reasonable rates.)	
BRITISH POSSESSIONS	281
BRONSON, A	281
BUCHANAN, DANIEL	91
BUFFALO, N. Y.	30, 46, 47, 63, 247
BUGGIES AND CARRIAGES	
charges on	15, 90
petition to enforce order relating to rates	289
answers of carriers to such petitions	293, 294, 295
BULK OF TRAFFIC	96
(See Traffic.)	
BURDEN OF PROOF	
on petition for rehearing	96
when on carrier	96
when on complainant	96
BURLINGTON AND MISSOURI RIVER R. R. Co	273, 274, 275, 276, 277
BUSINESS LOCATION	97
(See Location.)	
CAIRO, ILL.	244
CALHOUN, KING & SPALDING	295
CALIFORNIA	15, 277, 281
CALIFORNIA CENTRAL RY. Co	273, 274, 275, 276, 277, 278
CALIFORNIA SOUTHERN R. R. Co	273, 274, 275, 276, 277
CANADA ATLANTIC FAST FREIGHT LINE	246
CANADIAN COMPETITION	97
(See Competition.)	
CANADIAN PACIFIC RY. Co	83, 281
CAPE MAY	34
CAPITAL	
railway, per mile of line	6
CAPITAL STOCK	97
(See Reasonable rates.)	
CAR COUPLERS (See Couplers).	
CARLOAD, AND LESS THAN CARLOADS	97
CARLOAD RATES	
of carrier for oil	37
on live cattle	97
CAR MILEAGE	
different classes of cars	97
investigation concerning	97
not to be used as a device to evade making equal charges	97
on cars privately owned	97
on tank cars	97
payment of unlawful rebates in excessive car mileage	97
rebates by payment of excessive	40, 88
when burdensome	97
when paid to shippers	97

CARRIERS	Page.
adjustment of relative rates	104
answers of, to such petitions	271
application of, for through routes and through rates	102
arrangements for through lines	103
benefits ultimately derived by uniformity in classification	28
both shipper and, criminally liable	17
burden is on carriers to justify apparently disproportionate or relatively unequal rates	102
burden is on carrier to justify different rates on articles classified alike	102
by water	102
carload rates of, for oil	37
changes in classification by	27
combination rates criticised	104
compensation allowed by, to shipper for use of car	36
commodity rates	84
common-law liability of	55
compensation made by, for use of shipper's cars	39
competition by Canadian	102
competition does not warrant violation of law	88
complaints against, when insufficient	102
concerned in matters complained of should be made parties defendant	103
contracts made with shippers prior to act	103
declaration of agents	101
devices adopted by, for reducing passenger rates without notice	12
discrimination between connecting lines	103
duties and responsibilities of, beyond its own line	42
duties imposed upon, by statute	11
duties in connection with delivery of property	61
duties of, in absence of legislation	42
duties of, in routing freight	101
duty of, in carrying petroleum oil	101
duty of, in classifying property	100
duty of, in filing and publication of joint through export rates	100
duty of, in passenger transportation	100
duty to accept all ordinary traffic	99
duty of, to exhibit books and records	100
duty of, to furnish car equipment	101
duty to public	99
duty of, to public	101
each bound only for safe carriage over its own line	44
equalization of profits over different divisions of line, when unlawful	103
escape responsibility through neglect of duty of agents	12
excessive rates	99
filing of rate sheets raises no presumption as to legality of rates	103
foreign	102
framing of tariffs	101
freight carried at risk of	54
immigrant transportation	99
import traffic	83
informal complaints against	103
initial	45
inspection of freight cars	101
interest of, in connecting lines	103
investigations originate in complaints against	18
joint rates of	41
lake and rail	102
legal duty of, to accept for transportation	59
liability of, for loss or destruction of property	55
limitation by contract of their liability	59
manner in which business of, is conducted	10
manufacturer's description	103
methods of, in construction, publication, and filing of rate schedules	237
methods of, in shipments of freight	102
must post schedule of rates on export as well as domestic traffic	104

	Page.
CARRIERS—Continued.	
not parties when cited in	86, 104
orders of Commission not always obeyed by	15
over an initial line	42
owner's car hired by	36
owner of capital stock of coal company	104
petitions to enforce orders against, in United States circuit courts ..	271
power to make commodity and special class rates	104
practice of connecting	44
privileges granted by	99
production of books, papers, and documents	101
production of documentary evidence by	104
progress in direction of uniformity in classification	23
prosecution of	99
protection against unreasonably low rates	99
questions arising between shippers and	18
railroad company exclusive, over its own road	38
rates long continued presumed profitable	104
records of	102
refusal to furnish improved live-stock cars impartially	104
relieved of risk by agreement or contract with shipper	55
responsibilities and duties of, towards each other	42
responsibilities and duties of, towards shipper	43
responsibility of, in passenger transportation	102
rights of shippers	99
risk of in transportation of live hogs	103
risk of	54
risk remains on, after actual transit is terminated	55
selection of cars by	103
separate accounts by carrier who is a miner and shipper as well as a carrier of coal	103
should be able to justify advances in rates	92
solvency of any	44
special service in carrying perishable fruit	86, 87
special service in transportation of perishable freight	104
statement as to practices of	14
subject to the act	92, 98
terminal delivery by agent	103
the principal object of law was regulation of, in interest of justice ..	51
through routes voluntarily formed by connecting	45
to safely haul the cars of other, when tendered	45
traffic not to be charged at a loss	103
uniform bill of lading	315
unlawful rebates from rates on live cattle	104
when foreign carriers are subject to the act	102
when free cartage of freights is unlawful	103
when improvident management becomes unlawful	104
when not entitled to have through shipments protected as against competitors	102
when overcharge made through misapprehension may be returned ..	102
who are also miners and shippers of coal	103
who collect entire traffic charge	45
where first, issues a bill of lading	43
CARS:	
allowance to be made for use of each other's	46
box	105
charges on oil shipped in shippers' tank	37
compensation allowed by carrier to shipper for use of	36
compensation for use of shippers	39
demurrage for improper detention	46
discrimination from use of private	66
duty of carriers to furnish, can not be transferred to nor required of shippers	105
flat and box, in cotton transportation	105
freight, equipped with link and pin	339

	Page.
CARS—Continued.	
furnished by shipper.....	36
heating of passenger.....	105
heating of passenger.....	340
inability to furnish does not excuse unjust discrimination.....	105
live stock.....	40, 105
necessity of free interchange of.....	44
number of, fitted with automatic couplers.....	5
number of, fitted with train brakes.....	5
number of, furnished by each member of through route.....	46
number of, per 100 miles of line.....	5
number of, used by railways.....	5
of one company over the line of another.....	35
of other carriers to be safely hauled.....	45
owned by shippers.....	104, 105
passenger and freight.....	5
private.....	39
private live-stock.....	88
return loads for empty.....	104
selection of.....	105
separate for white and colored passengers.....	104
should be owned by carriers.....	105
special equipment for perishable freight.....	105
special pattern.....	36
tank.....	105
tank furnished by shippers.....	37
use of shippers.....	34
variety of couplers in coupling.....	338
CARTAGE	
free.....	15, 105, 106
CARTEN, THOMAS.....	309, 314
CASES IN UNITED STATES CIRCUIT COURTS.....	271
CASUALTIES	
ratio of, to railroad employes.....	338
CATTLE.....	106
(See Live stock.)	
rates on.....	40
CENTRAL PACIFIC R. R. Co.....	281
CENTRAL R. R. AND BANKING CO. OF GEORGIA.....	295
CENTRAL R. R. CO. OF NEW JERSEY.....	91, 83, 86
CENTRAL TRAFFIC ASSOCIATION.....	24, 30
CHAMBERLAIN, WILLIAM D.....	90
CHARACTER OF TRAFFIC.....	106
(See Traffic.)	
CHARGES	
schedules of.....	13
unjust and unreasonable.....	17
what are unjust and unreasonable.....	18
CHARLESTON AND SAVANNAH RY. CO.....	91
CHARLESTON, S. C.....	303
CHARTERS	
first railroad.....	35
CHATTANOOGA, ROME AND COLUMBUS R. R. Co.....	86
CHATTANOOGA, TENN.....	294
CHICAGO AND ATLANTIC RY. Co.....	83
CHICAGO AND GRAND TRUNK RY. Co.....	83
CHICAGO AND NORTHWESTERN RY.....	342
CHICAGO AND NORTHWESTERN RY. Co.....	90
CHICAGO AND ST. LOUIS TRAFFIC ASSOCIATION.....	264
CHICAGO, BURLINGTON AND QUINCY R. R. Co.....	90
CHICAGO, BURLINGTON AND QUINCY SYSTEM.....	34
CHICAGO, ILL. 10, 12, 24, 26, 27, 40, 47, 60, 63, 66, 88, 244, 245, 264, 273, 274, 278, 312, 342	
special rates to and from during Exposition.....	66, 67
CHICAGO, KANSAS AND NEBRASKA RY. Co.....	273, 275, 276, 277, 282
CHICAGO, MILWAUKEE AND ST. PAUL RY.....	342
CHICAGO, ROCK ISLAND AND PACIFIC RY.....	342

	Page.
CHICAGO, ST. PAUL AND KANSAS CITY RY. Co.....	90
CINCINNATI, HAMILTON AND DAYTON R. R. Co.....	83, 90
CINCINNATI, NEW ORLEANS AND TEXAS PACIFIC RY. Co.....	90
CINCINNATI, NEW ORLEANS AND TEXAS PACIFIC RY. Co.....	289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300
CINCINNATI, OHIO.....	15, 63, 91, 244, 274, 278, 290, 292, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303
CINCINNATI, WASHINGTON AND BALTIMORE R. R. Co.....	83
CIRCUIT COURTS OF THE UNITED STATES (See United States circuit courts.)	
CIRCUIT JUDGES.....	16
CIRCULAR LETTER relative to steam heating of cars.....	343
CIRCULARS regarding changing rates while advertised changes are pending ..	260
CIRCUMSTANCES AND CONDITIONS.....	18, 85
domestic and import traffic.....	84
to what they must relate to constitute exceptions under fourth section	107
what do not constitute dissimilar.....	106
what may be dissimilar.....	106
CIST, CHARLES M.....	295
CIVIL PROCEEDINGS in Federal courts.....	15
CLASSIFICATION.....	250
according to length of line operated.....	5
analogous articles entitled to same.....	107
articles classified alike are presumptively entitled to equal rates ..	108
articles differently classed taken at owner's risk or carrier's risk ..	64
benefits derived by carriers from uniformity in ..	28
bulk and value of weight.....	109
but a general method of establishing rates ..	26-27
carloads and less than carload quantities.....	109
changes in, produce changes in rate.....	230
changes in, when unjustifiable.....	109
classification committee.....	110
considerations affecting.....	110
construction.....	108
differences in, may violate the fourth section ..	107
distinctions in.....	108
diversity of, of freights.....	23
duty of Commission to correct.....	85
essential to rate making.....	85
existing, should be consolidated.....	33
existing, the result of long study ..	33
false ..	17
food products.....	111
form of.....	108
frauds in.....	108
freight, progress and present status of.....	31
harmonizing of, since organization of Commission ..	32
in States where legislation has established ..	31
local and independent systems of.....	32
manufacturers' description governs as to value.....	110
market value, etc ..	111
mixed car-loads lots.....	107
of corn and corn products.....	109
Official.....	23, 24, 31, 32
of freight ..	11
of railways according to gross revenue.....	5
patent medicines.....	111
petroleum and its products ..	112
principles controlling.....	107
report upon ..	30
recognized by act.....	112
rules of the committee.....	110
salted hides and pelts ..	112

CLASSIFICATION—Continued.	Page
sheets.....	54
should be expressed in plain terms.....	266
soap.....	90, 111
Southern Railway and Steamship Association.....	24, 32
standing committee on uniform.....	28
surgical chairs.....	110
unification of, of general benefit to the country.....	34
uniform.....	23
uniform.....	65, 108, 109
uniformity to be desired.....	266
uniform, no longer considered impracticable.....	33
uniform, proposed new.....	32
used as a device to effect unjust discrimination.....	85
value of.....	109
volume of the traffic.....	111
Western.....	24, 32
wheat and wheat flour.....	110
when unlawful.....	109
when used as a device to violate the law, committee will revise and correct.....	112
CLERICAL FORCE.....	75
CLEVELAND, CINCINNATI, CHICAGO AND ST. LOUIS RY.....	342
CLEVELAND, CINCINNATI, CHICAGO AND ST. LOUIS RY. Co.....	83, 90
CLEVELAND, OHIO.....	312
CLYDE STEAMSHIP Co.....	92
COAL.....	85, 112
petition to enforce order reducing rates.....	282
answer of carrier to such petition.....	286
reduction in charges for carrying.....	15
(See Long and short haul, etc.)	
COAL COMPANY.....	
capital stock owned by railroad company.....	112
COE vs. ERROL.....	48
COLLISION.....	
in Fourth avenue tunnel.....	340
COLORADO.....	26
COLORLED PERSONS.....	
equal accommodation and treatment of.....	15
COLSTON, EDWARD.....	295
COLUMBIAN EXPOSITION.....	
special rates to and from the.....	66
COLUMBUS, KY.....	244
COMBINATION RATES.....	263, 266, 267
through rate to competitive point added to local rate back to destination.....	112
COMMERCE.....	
destined to an adjacent foreign country.....	112
foreign regulation of.....	113
is under protection of Constitution.....	48
railroad regulation in foreign countries.....	113
railroad regulation in the States.....	113
State and Federal regulation of.....	113
(See Interstate Commerce.)	
COMMERCIAL CONSIDERATIONS.....	113
COMMERCIAL EXCHANGE OF PHILADELPHIA.....	83
COMMERCIAL ORGANIZATIONS.....	65
COMMISSION DEPENDENT UPON THE COURTS FOR EFFICIENT EXECUTION OF THE ACT.....	14-15
COMMISSIONERS.....	
convention of railroad.....	321
State railroad.....	323
COMMISSIONS ON SALE OF TICKETS.....	
payment of.....	114
regulation against paying.....	113
prohibition of, recommended.....	114

	Page.
COMMITTEE ON UNIFORM CLASSIFICATION	
proceedings of	29
report and proceedings of	30
COMMODITY RATES	249-250, 251
Described and discussed	114
power of carrier to make	114
COMMON CONTROL, MANAGEMENT OR ARRANGEMENT	
defined	86, 114
COMMUTATION TICKETS	114
(See Tickets.)	
COMPENSATION	
for use of shippers' cars	39
of employés	69
COMPETITION	
between localities	114
between producers, localities, or commodities	115
by Canadian carriers	115
combined rail and water	115
effect of act upon	114
effect of excessive	114
equal mileage rates often prevent	115
may make out dissimilar circumstances and conditions in railway traffic	114
public not to be deprived of benefits of fair, by consolidation	116
railroad	116
violation of law unwarranted by	88
water	115
what is legitimate	115
what is not legitimate	115
when dissimilar circumstances and conditions are not made out by railroad competition	115
when dissimilar circumstances and conditions may be made out by railroad competition	115
when not an excuse for unjust relative rates	114, 115
when not sufficient to constitute exception	114
COMPETITIVE COMMODITIES	88
COMPETITIVE POINTS	116
COMPLAINANT	
Mercantile Society as	86
Mercantile Society, special damage need not be shown	118
need not be directly damaged	118
State Railroad Commissions as	118
when complainant, a State railroad commission, has ceased to exist	92
when precluded by contract	118
COMPLAINT	
amendment, after filing of demurrer	118
amendment of	117
dismissal after concession of relief	118
duty of commission to investigate	118
formal	118
form of	117
informal	117
investigation when no personal grievance proved	117
jurisdiction	118
parties	117
when insufficient	117
when not adjudicated	117
when not entertained by Commission	114
when not favored	117
when sufficient	117, 118
COMPLAINTS	
asking reparation for damages	10
must be supported by proof	116
CONCESSION OF RELIEF	
partial	119
terminates the controversy	118
when reparation is made no order will be issued	119

	Page.
CONDITIONS	
great diversity in, under which roads are operated	4, 119
<i>(See Circumstances and conditions.)</i>	
CONFERENCE OF RAILWAY REPRESENTATIVES	
to merge classifications	24
CONGRESS	
bills introduced relating to bills of lading	58
constitutional right of	48
court organized by	18
no action taken relative to safety appliances	337
power to regulate interstate commerce absolute	46, 119
question of power of, presented by hypothetical case	46
CONNECTICUT	49, 323, 333, 334, 341
statutes of, relating to heating of passenger cars	343
CONNECTING LINES	41-54
one line wholly within a State	119
through carriage over	119
transportation of interstate traffic by initial carrier between points in the same State	119
unjust discrimination between	43, 50
water and rail	119
CONSOLIDATION	
necessities of commerce require the, of existing classifications	33
CONSOLIDATION OF ROADS	
competing lines	120
subject discussed	120
CONSTITUTION	
commerce is under protection of	48
power of Congress under	47
CONSTITUTIONAL GUARANTY OF JURY TRIAL	23
CONSTRUCTION OF RATE SCHEDULES	239-270
CONTINUOUS BRAKES	338
CONTINUOUS CARRIAGE OF FREIGHT	17
can not be avoided by evasion of the law	120
interruptions	120
CONTRACT	
adequate consideration for	59
between carrier and shipper	55
shipping	59
CONTRACTS	
cars	120
compulsory production of	120
consideration of, as evidence after filing	121
entered into prior to the act	120, 121
exemption of carrier from liability	61
for through lines	121
for use of improved cars owned by shippers	121
trackage rights	120
CONVENTION OF RAILROAD COMMISSIONERS	65-66
address of Chairman Cooley	321, 323
committee on order of business	333
on railway legislation	333
on reasonable rates	333
on safety appliances	334
discrimination by use of private cars	333
resolutions	333, 334
ticket scalping	334
COOLEY, HON. THOMAS M.	323, 334
address of	323
CORN AND CORN PRODUCTS	121
CORPORATION	
indictment of	17
CORPORATIONS	
carriers subject to act are	16
furnishing rolling stock to railways	9
number of railway	4

	Page.
CORRESPONDENCE	
settlement of controversies by means of	11
COST OF CARRIAGE	88
basis for adjustment of relative rates	122
consideration of, in determining reasonable rates	122
corn and corn products	122
differences between, on through and local traffic	121
difficulty on determining	121
elements entering into	121
exceptional circumstances and conditions caused by	122
is an important fact in transportation charges	121
local and through traffic	122
milk transportation	121
of long-haul traffic not to be imposed on local traffic	121
COST OF PRODUCTION	122
COST OF SERVICE	122
(See Cost of carriage.)	
COTTON	122
shipment of a single bale	14
COUNCIL BLUFFS, IOWA	269
COUPLING	
steam	349
COUPLING AND UNCOUPLING CARS	
accidents from	8
COUPLERS	
automatic	5
number of, in use	339
to be of same type	339
variety of, chief cause of casualties	338
COURT	
holdings of, on question of unlimited tickets	13
instructions to jury to acquit	13
organized by Congress	18
petitions to United States circuit	15
COURTS	
civil proceedings in Federal	15
Commission upon the, for efficient execution of the act	14
decisions of United States circuit	10
decisions of, in relation to condition in bills of lading	60
decisions of, on liability of carriers	61
effect of a decision of the Commission in	21
questions before, in civil action for damages	18
status of Commission with reference to	21
COURTS, FEDERAL	
provisions of act construed by	19
COXE, ALEXANDER B	283, 286
COXE BROS. & Co	85, 283, 284, 285, 286, 287
COXE, ECKLEY B	283, 286
COXE, HENRY B	283, 286
CRIMINAL PENALTIES	15
CRIMINAL PROCEEDINGS	15-26
instituted against officers and agents	16
CROCKER, GEORGE G	323, 333
resolution of	337
CROMWELL PACIFIC THROUGH LINE	270
CROSS, H. C	93
CUMMING, JOS. B	302, 308
DAMAGE	122
(See Complaint.)	
DAMAGES	
holdings of United States courts regarding reparation for	10
reparation for	9
DAYTON, FORT WAYNE AND CHICAGO RY. CO	90
DECISIONS	
application limited to present situation	122
changed after rehearing	123
commodity rates	123

	Page.
DECISIONS—Continued.	
common control, management or arrangement	123
discrimination as used in third section	123
effect in the court of a, of the Commission	21
of Commission on oil rates	38
of Commission not final	18
of Commission should be given the weight and finality of report of master in chancery of Federal court	21
points decided during the year	81
points decided since organization	81
publication of	358
special class rates	123
DECKER, MARTIN S.	323
DELAWARE	50, 87
DELAWARE, LACKAWANNA AND WESTERN R. R. Co	83, 88
DELAWARE PENINSULAR	91
DELAWARE R. R. Co	87
DELAWARE STATE GRANGE OF THE PATRONS OF HUSBANDRY	87
DELAY IN FILING TARIFFS	256
DEMURRAGE	
for improper detention	46
DENMARK	66
DENVER, COLO.	11
DEPEW, H. S.	269
DEPOSITIONS	
how taken and filed	123
DERRINGER, PENN.	284, 287
DETROIT, GRAND HAVEN AND MILWAUKEE RY. Co	15, 309, 310, 311, 312, 314
DETROIT, LANSING AND NORTHERN R. R. Co	313
DETROIT, MICH.	63, 274, 278, 309, 312
DEVICE	123
DIFFERENCE BETWEEN JOINT AND COMBINATION RATES	263
DISCRETION	123
DISCRIMINATION (<i>see</i> Unjust Discrimination)	11
between connecting lines	123
from use of private cars	66
DISCRIMINATIONS	18
from use of private cars	66
DISTANCE	
longer and shorter	123
tables	247
tariffs	247
DISTRICT ATTORNEY	
indictments framed by	13
DISTRICT OF COLUMBIA	349
DIVIDENDS	123
on stock	6, 7
DIVISIONS OF THROUGH RATES	124
(<i>See</i> Through and Local Rates; Mileage Rates; Reasonable Rates.)	
DOCUMENTARY EVIDENCE	124
(<i>See</i> Practice; Evidence; Interstate Commerce Commission.)	
DOMESTIC MERCHANDISE	84, 124
DORSEY, E. R.	298
DREDGE, MR. JAMES	66
DRIFTON (LUZERNE COUNTY), PA	283, 284, 286, 287
DULUTH, MINN.	281
EAGLE PASS	26
EAST TENNESSEE, VIRGINIA AND GEORGIA RY. Co	294
EASTERN STATES	6, 28
EASTON AND AMBOY R. R. Co	286, 289
ECKLEY, PA	284, 288
EDDY, GEORGE A.	93
EL PASO	26
EMPLOYÉS, RAILROAD	
accidents to	337
demands of, for uniform coupler	339
names and compensation	69

	Page.
EMPLOYEES, RAILROAD—Continued.	
ratio of casualties to	338
total number reported killed and injured	8
to the number of, on railways	6
ENFORCING THE ACT	15-26
ENGINE	
supplying heat from	340
ENGLAND	51, 52, 66
legislation in, for regulation of railway traffic	53
EQUIPMENT (<i>see</i> Cars)	124
car heating	340
furnished by corporations and companies	9
ERROL, COE <i>vs</i>	48
ESTOPPEL	
contracts between the parties	124
doctrine of	56
EVIDENCE	
additional	125
by deposition	125
cases retained for further showing	126
construction of classification	124
contracts and tariffs filed with Commission	126
effect of contracts made prior to the act	126
in penal and criminal prosecution	125
oral and documentary	126
preference and advantage	125
presumption	124
proof in support of petition for rehearing	126
proof required	124
to rebut interference of unjust discrimination	125
what is sufficient	125
EXAMINATIONS	
advantages of local	11
EXCEPTIONAL CONDITIONS	127
(<i>See</i> Circumstances and conditions.)	
EXHIBITS	
of statistical divisions	3
EXPENDITURES	
statement of	69
EXPORT RATES	
through	127
EXPORT TRAFFIC	87, 127
publication of joint tariffs on	257, 258
EXPOSITION	
World's Columbian, special rates to and from the	66
EXPRESS COMPANIES	
gross income of	9
how related to the act	127
live stock	128
money paid annually by, to railways	9
should be required to make reports	9
status of, under act to regulate commerce	127
FACILITIES OF TRAFFIC:	
contract for use of tracks	129
equality in	128
extraordinary facilities and rights of way given to private live-stock cars	130
interchange of traffic	129
through routes and through rates	128
to and from local stations	129
(<i>See</i> Through routes and Through rates.)	
FAITHORN, J. N	255
FALLS CITY, NEBR	269
FALSE BILLING	17
FALSE CLASSIFICATION	17

	Page.
FALSE REPRESENTATION	17
FALSE WEIGHING	17
FANSHAWE, JOHN R.	289
FARE	
colored and white persons paying the same	15
FARES	
schedules of	13
FARGO, N. DAK.	10
FAST FREIGHT LINE	246, 247
FAVOR IN TRASPORTATION	
to coal company, the capital stock of which is owned by carrier	130
to owners of live-stock cars	130
to shippers over one division of a consolidated line	130
FEDERAL AUTHORITY	130
(See Interstate commerce.)	
FEDERAL COURTS	
civil proceedings in	15
decisions, difficulties of enforcing obedience to, of Commission	19
holdings of in relation to conditions of bills of lading	60
reports of master commissioner in chancery of	20
status of Commission with reference to	21
FEE, CHARLES S.	261
FILING OF RATE SCHEDULES	239-270
FINDINGS OF FACT	
and conclusions of Commission	20
FINDINGS OF FACT BY COMMISSION	
Commission to determine what are reasonable rates	130
correction after rehearing	130
error in	130
prima facie evidence in United States courts	130
FINE	
where punishment prescribed is	16
FINK, ALBERT	283
FIRST SECTION. (See Reasonable rates.)	
FITCH, CHARLES L.	314
FIXED CHARGES (see Reasonable rates)	130
FLEMING, HON. W. B.	333
FLORIDA	4, 92, 323, 333
increase in operated mileage in	4
FLORIDA CENTRAL AND PENINSULAR R. R. Co	92
FLOUR	130
FOREIGN MERCHANDISE	83, 131
FORMS	369
1. Complaint against a single carrier	369
2. Complaint against joint or connecting carriers	370
3. Notice to answer	370
4. Notice to complainant	370
5. Answer	371
6. Notice by carrier under Rule V	371
7. Acknowledgment of answer	371
8. Notice of hearing	372
9. Subpoena	372
10. Notice of taking depositions under Rule XII	372
uniform bill of lading	315
FOOD PRODUCTS	130
FORT WORTH AND DENVER CITY R. R.	26
FOURTH AVENUE TUNNEL	340
FOURTH SECTION (see Long and short haul clause; act to regulate commerce)	131
FREE CARTAGE	15
petition to enforce order in relation to	309
answer of carrier to such petition	312
FREE CARTAGE OF FREIGHT	
investigation concerning	131
when unlawful	131

	Page.
FREIGHT	
average carried 1 mile per mile of line	7
average haul per ton	7
average receipts carrying 1 ton of, 1 mile	7
carried at owner's risk	54
carried at risk of carrier	54
cars	5
classification of	1-23
continuous carriage of	17
cost carrying 1 ton 1 mile	7
express in reality quick delivery of	9
locomotives in use	5
New England Association	30
number of tons of, carried	7
tons of, carried 1 mile per freight engine	5
traffic	7
train mileage	7
uniform bill of lading	315
uniform classification of	23
uniformity in the classification of, desirable	28
Western Association	30
(See Traffic)	131
FREIGHT CLASSIFICATIONS	
progress and present status of	31
FREIGHT MONEYS	
held to be a first lien	46
FRUITS	131
GAINESVILLE, GA	298
GALBRAITH, J. E	260
GALVESTON, TEX	244, 281
GARBER, W. S	334
GEOGRAPHICAL LOCATION	131
GEORGIA	4-15, 91, 290, 293, 296, 299, 300, 302, 304, 306
increase in operated mileage in	4
statutes	51
GEORGIA RAILROAD AND BANKING CO	296
GEORGIA R. R. Co. 15, 90, 289, 290, 291, 292, 293, 294, 295, 296, 297,	
298, 299, 300, 301, 302, 303, 305, 306, 307, 308	
GERMANY	66
appropriation to introduce steam-heating of cars in	343
GODDARD, MR	67
GOVERNMENT-AIDED RAILROAD AND TELEGRAPH LINES	9-10, 131
GOWEN, PA	284, 287
GRAND HAVEN, MICH	309
GRANDPA'S WONDER SOAP	90
GRAND RAPIDS, MICH	15, 310, 313, 314
GRAND TRUNK RY. CO., OF CANADA	83, 342
GREAT LAKES	
transportation on should be brought under control of Commission	9
GROUP RATES	85
on coal	131
GROUPS	
comparative summary of items by	4
statistics classified into	4
HARDING vs. HARDY	20
HARLEM RIVER	91
HARTSHORNE, CHARLES	289
HAMILTON & BROWN	86
HANNIBAL AND ST. JOSEPH R. R. Co.	90
HAZELDINE, W. C	282
HEARD, W. H	303, 304, 305, 306, 307
HEARING	
when precluded by contracts between the parties	131
HEARINGS	
recommendations of Commission relative to	22
when not precluded by contracts between the parties	131
HEATER (see Heating of passenger cars).	

	Page.
HEATING OF PASSENGER CARS	340
Germany, Switzerland	343
statutes of various States relating to	343
HILLZER, GEORGIA	308
HIMES, WILLIAM	333
HINTON, E. H. 269,	270
HOGS AND HOG PRODUCTS	132
HOUSATONIC CO	50
HOUSATONIC R. R.	49
HOUSATONIC R. R. CO.	89
HOUSE OF REPRESENTATIVES	
resolutions in regard to uniform classification in	27
HOW, E. W.	269
HUMBOLDT, KANS	270
ILLINOIS	8, 323
Munn vs.	48
ILLINOIS CENTRAL R. R.	83
ILLINOIS CENTRAL R. R. CO. 269,	342
ILLINOIS LEGISLATURE	
bills introduced	343
IMPORT RATES	83
IMPORT TRAFFIC	132
publication of joint tariffs on	258
INCOME	
gross, of railways	5
monthly returns of railway	3
INDIANA	7, 8
INDIANAPOLIS BOARD OF TRADE	32
INDIAN TERRITORY	264
INDICTMENT	
charge of	12
INJURED	
total number reported as	8
INLAND PROPORTION OF THROUGH FOREIGN RATE	268
INSTRUMENTALITIES OF SHIPMENT OR CARRIAGE	132
INTERCHANGE OF TRAFFIC (<i>see</i> Through routes and through rates).	
INTERNATIONAL AND GREAT NORTHERN R. R.	260
INTERSTATE	
Southern Association	30
INTERSTATE COMMERCE	
decisions of United States courts relating to	134
hearing of Senate Committee on	337
practicable regulation	85
practical workings of regulation	134
regulation of	48, 133
regulation of, Federal Government	133
regulation of rates in import traffic	83
State regulation of, how effected	134
transportation to adjacent foreign country	133
uniform bill of lading	315
what constitutes	132
what is not	132
INTERSTATE COMMERCE COMMISSION 9, 24, 273, 274, 275, 277, 278, 279, 280, 282,	
283, 284, 285, 286, 287, 289, 290, 291, 293, 294, 295, 296, 297, 302, 303, 304,	
305, 306, 307, 308, 309, 311, 312, 323, 333, 334, 355, 364, 369, 370, 371, 372	
abstract of decisions of	11
abstract questions will not be answered	134
administrative duties of	11
after reparation no order will be made	138
allowance of damages or counsel or attorneys' fees	135
amendments recommended by	68
appendices to report of (<i>see</i> Appendices).	
asked to order reparation for damages	9
complaint, when not favored	136
conclusions and findings of fact of	20
conclusions of, on subject of uniformity in classification	27
coöperation of, asked in direction of uniform classification	32

INTERSTATE COMMERCE COMMISSION—Continued.

Page.

decision of, on relative rates of oil	38
decisions of, not final	18
decisions of, should be given at least the weight and finality of report of master in chancery of Federal courts	21
dependent upon the courts for efficient execution of the act	14
detail work of	3
difficulties of enforcing obedience to decisions of	19
divisions of through rates	91
duties imposed by the act	18
duties of quasi-judicial character imposed upon	18
duties of the several divisions of	3
duty of, to correct classifications	85
duty of, to investigate complaints	92
effect in the courts of a decision of	21
establishment of through rates and through routes by	49
exhibits of statistical division of	3
experience of, confirms its opinion for necessity of amendment	23
express companies should report to	9
facts found by, controverted by other testimony	21
findings of fact of	19
fourth annual report of	138
Great Lakes and river traffic under control of	9
harmonizing of classification, since organization	32
immigrant transportation	135
increase of unreasonably low rates	135
increasing volume of business of	3
informal complaints	138
investigations by	136
jurisdiction	135
jurisdiction strictly statutory	135
lack of authority under the act	50
local examinations under direction of	11
may order depositions to be taken	138
modification or reversal of previous orders	23
names of members and secretary	2, 68
neither complaint nor complainant necessary to confer jurisdiction	92
no power to compel joint arrangement between water and rail lines	136
not clothed with power to enforce its orders	18
notices of changes in joint rates must be given to	136
notice to, of changes in joint rates	41
not invested with power to enforce its own orders	14
omission to challenge schedules of rates on file	138
order not retroactive	135
order of, reducing rate on peaches	50
orders of not always obeyed	15
persons employed	69
petitions brought in United States circuit courts to enforce its orders	271
answers of carriers to such petitions	271
petitions not necessarily entertained	135
points decided during the year	81
points decided since organization	81
position of, with regard to uniform classification	31
power of Commission in regard to reasonable rates	85
powers and duties	137
power under fourth section of act limited	135
power under the third section limited	136
recommendations of, relative to enforcement of its orders	22
recommendations or orders by, for reparation	10
recommends amendments relative to hearings before	22
recommends the passage of an act requiring the adoption of a uniform classification	33
relief under fourth section	135
relieved by the action of the carriers in regard to uniform classification	33
report of	3
secretary	2

	Page.
INTERSTATE COMMERCE COMMISSION—Continued.	
special sessions and inquiries of	10
State railroad commission as complainant	138
statistical report of	138
status of, with reference to Federal courts	21
summary of force of	3
tariffs under fourth section	135
when complainant, a State railroad commission, has ceased to exist ..	92
when rehearing will not be granted by	136
INTERSTATE TRAFFIC	42
INQUIRIES	
special sessions and	10
INVESTIGATION	
by Commission of questions of great intricacy	18
by Commission	10
local, by special agents	11
originate in complaints against carriers	18
IONIA, MICH	15, 310
IOWA	25, 26, 52, 323, 333
laws of	52
IRON	
pig	138
IVORY SOAP	90
JACKSON, MICH	312
JACKSONVILLE, FLA	10
JAMES & MAYER BUGGY Co.	90, 290, 291, 293, 296, 297, 302
JERSEY CITY	87
JEWETT, CHARLES A	262
JOHN P. SQUIRE & Co	87
JOHNSON, JOHN G	289
JOINT RATES	14, 263, 268
notice to Commission of changes in	41
of carriers	41
publication of	42
JOINT TARIFF	
authority for	245
circular concerning filing	138
export	138
filing of, with Commission	138
need not be duplicated	138
notices of changes in	138
publication of	138, 245, 257, 258
should show points of connection	247
JUDGMENT AND EXECUTION	
provision for enforcing in the courts by	10
JUDGES	
circuit	16
JUDICIAL AND ADMINISTRATIVE QUESTIONS	139
JURISDICTION	
foreign carriers	139
in penal cases	139
when inadequate	139
JURORS	16
JURY	
constitutional guaranty of, trial	23
depend largely upon instructions of the court	18
KANSAS	7, 11, 26, 273, 274, 343
KANSAS CITY, CLINTON AND SPRINGFIELD RY	269
KANSAS CITY, FORT SCOTT AND MEMPHIS R. R.	269
KANSAS CITY, MO	11, 93, 269
KENTUCKY	4, 290, 323
increase in operated mileage in	4
KEROSENE LAMP (<i>See</i> Heating of passenger cars.)	
KILLED	
total number reported as	8
LACKAWANNA LIVE-STOCK EXPRESS Co.	40

	Page.
LADING	
bills of	54
LAKE SHORE AND MICHIGAN SOUTHERN RY.....	266
LAKE SHORE AND MICHIGAN SOUTHERN RY. Co.....	83, 90
LAMPS, KEROSENE (<i>See</i> Heating of passenger cars.)	
LANSING, MICH.....	312
LAWS	
advantages of uniformity in	65
LEAVENWORTH, KANS.....	269
LE BAU, WELLING <i>vs</i>	20
LEGISLATION	
for regulation of railway traffic in England	53
railroad	66
LEHIGH, PA.....	282
LEHIGH VALLEY R. R. Co.....	15, 83, 85, 86, 91, 282, 283, 286, 288
LEHMAN, HIGGINSON & Co.....	93, 269
LEMONS.....	92
LIKE KIND OF TRAFFIC	
definition	139
LINCOLN, NEBR.....	269
LINES	
connecting	41
railway, leased to other companies	5
LINK AND PIN COUPLING	339
LIVE STOCK	88
car lot rates	139
cattle and dressed beef	140
duty of carriers	139
hogs and hog products	139
patent stock cars	139
transportation in improved stock cars	140
use of yards	139
LIVE-STOCK CARS	
discrimination in favor of shippers owning	40
LOCALITIES (<i>see</i> Location)	140
LOCAL RATES (<i>see</i> Through and local rates)	140
LOCATION	
advantages and disadvantages	88, 140
LOCOMOTIVES	
freight	5
freight carried one mile per freight	5
number of, fitted with automatic couplers	5
number of, fitted with train brake	5
passenger	5
per each 100 miles of operated line	5
total number of	5
LONG AND SHORT HAUL CLAUSE	
application of	141
bulk and value of the freight	145
burden of proof	144
carriers called upon to justify violation at public hearing	143
case retained for further showing	87
circuitous route	142
circumstances and conditions	148
competition	142
concession of rates before decision	144
construction clause stated	143
construction of	140
declaration by carrier that it is a local carrier to certain stations on its line	149
differences in classification may violate	143
different lines of the same carrier	145
empty cars and return loads	145
enforcement of	145
exceptions under, may cause violations of second and third sections	142
fast freight line	142
free cartage of freights	145

	Page.
LONG AND SHORT HAUL CLAUSE—Continued.	
group rates.....	144
localities.....	143
long and short hauls discussed.....	149
milk rates.....	144
over the same line.....	142
passenger rates.....	144
parties to long-haul rates.....	142
perishable freight.....	149
petitions filed in United States circuit court to enforce order.....	273, 289, 309
answers of carriers to such petitions.....	277, 293, 294, 295, 312
proceedings of the Commission under the fourth section stated.....	144
proportion of rates to participating roads.....	144
railroad competition.....	143
railroad competition between terminals.....	143
rates lower to basing point than to shorter distance local point.....	149
same charge for longer and shorter distances.....	148
several roads participating.....	143
State railroad as part of through interstate line.....	91
sufficiency of complaint; burden of proof.....	148
tariffs and classification.....	145
through rates.....	145
transportation of food products.....	148
water competition.....	91, 146
what does not justify exception.....	90
what does not violate.....	142
what justifies exception to.....	85, 90
when combined competition by rail and water do not justify.....	145
when exceptional rates should be discontinued.....	146
when freights have paid local rates.....	145
LOS ANGELES, CAL.....	15, 273, 274, 275, 278, 279, 280, 281, 282
LOUISIANA.....	7, 8, 14, 323
LOUISVILLE AND NASHVILLE R. R.....	269
LOUISVILLE AND NASHVILLE R. R. Co.....	86, 295
LOUISVILLE, NEW ORLEANS AND TEXAS RY.....	269
LOUISVILLE, NEW ORLEANS AND TEXAS RY. Co.....	83-87
MACLAINE, T.....	261
MAHANAY, PA.....	282, 286
MAINE.....	323, 333, 341
statutes of, relating to heating of passenger cars.....	344
MANUFACTURER'S DESCRIPTION.....	
may be accepted by carriers for purposes of classification and rates.....	150
MANUFACTURING INDUSTRY.....	150
MARKETS.....	
creation or destruction of profitable markets by carriers unlawful.....	150
fluctuations of.....	88
MARSHALL, CHIEF JUSTICE.....	20
opinion of Chief Justice.....	
MARYLAND.....	34, 87
statutes of, relating to heating of passenger cars.....	344
MASSACHUSETTS.....	49, 61, 323, 333, 341
statutes of, relating to heating of passenger cars.....	344
MASTER CAR BUILDERS' ASSOCIATION.....	341
MASTER COMMISSIONER.....	
conclusions and findings of fact of.....	20
reports of, in chancery of the Federal courts.....	20
MAXIMUM RATES.....	243
MCCAIN, C. C.....	292
MEDDAUGH, E. W.....	314
MERCHANDISE (<i>see</i> Traffic).....	150
MERCANTILE SOCIETY.....	86
(<i>See</i> Complainant).....	150
MERCHANTS.....	
letter received from, in Louisiana.....	14
METHODS OF CARRIERS IN THE CONSTRUCTION, PUBLICATION, AND FILING OF RATE SCHEDULES.....	239-270
MEYER, Mr.....	66

	Page.
MICHIGAN	7, 8, 15, 312, 314, 323, 341
statutes of, relating to heating of passenger cars	344
MICHIGAN CENTRAL R. R. Co.	83, 88, 312, 313
MIDDLE STATES	5, 6, 7-28
MILEAGE	
freight train	7
increase in railway	4
largest increase in operated	4
of companies, consolidated	5
of companies reorganized	5
of companies who have merged their corporate existence	5
the passenger	7
the railway, of the United States	4
MILEAGE RATES	
abuses in issuing	151
application of the law to	151
issuance of	150
must be impartially offered	151
rates must be published	151
MILLEDGEVILLE, GA.	298
MILLER, D.	295
MILLING IN TRANSIT	
a favor in transportation	151
milling in transit rates as a part of a through rate discussed	151
no authority to compel	151
MILWAUKEE, WIS.	10, 309
MINNEAPOLIS	12, 25
MINNEAPOLIS, ST. PAUL AND SAULT STE. MARIE RY.	263
MINNESOTA	25, 26, 323
MISAPPREHENSION	
in the purchase of tickets	151
MISSISSIPPI	4
increase in operated mileage in	4
MISSISSIPPI RIVER COMMON POINTS	245
MISSISSIPPI VALLEY R. R. TRUNK LINE ASSOCIATION	30
MISSOURI	6, 274
MISSOURI, KANSAS AND TEXAS RY.	270
MISSOURI, KANSAS AND TOPEKA RY. Co.	93
MISSOURI PACIFIC RY.	249, 250, 270, 342
MISSOURI PACIFIC RY. Co.	90, 273, 274, 275, 276, 277
MISSOURI RIVER POINTS	269, 270
MOBILE AND OHIO R. R.	269
MONEYS, FREIGHT HELD TO BE A FIRST LIEN	46
MOREY, D. B.	269
MOREY, J. G.	269
MORRISON, WILLIAM R.	333
MORTLAND, DAVID N.	333
MOSELEY, EDW. A.	277, 285, 293, 307, 311, 323, 364
MUNN vs. ILLINOIS	48
NAMES OF EMPLOYÉES	69
NASHVILLE, CHATTANOOGA AND ST. LOUIS RY. Co.	86
NATIONAL CONVENTION OF RAILROAD COMMISSIONERS	337
NATIONAL TRANSPORTATION ASSOCIATION	32
official uniform bill of lading suggested by	65
NEBRASKA	25, 26, 273, 274, 323, 334
NEBRASKA CITY, NEBR.	269
NEW ENGLAND COMMON POINTS	245
NEW ENGLAND FREIGHT ASSOCIATION	30
NEW ENGLAND STATES	5, 6, 7, 8, 28
NEW ENGLAND TERMINAL COMPANY	89
NEW HAMPSHIRE	341
statutes of, relating to heating of passenger cars	344
NEW JERSEY	283, 286, 287, 288
NEW MEXICO	7, 8
NEW ORLEANS	93, 244, 245, 269, 270
NEW ORLEANS COTTON EXCHANGE	87

	Page.
NEW ORLEANS TRAFFIC ASSOCIATION	93, 269, 270
NEW YORK	
statutes of, relating to heating of passenger cars	343
NEW YORK AND NORTHERN R. R. Co	49-50
NEW YORK AND NORTHERN CASE	52
NEW YORK AND NEW ENGLAND R. R. Co	49, 50, 86, 89, 91
NEW YORK AND NORTHERN RY. Co	89
NEW YORK AND TEXAS STEAMSHIP Co	92
NEW YORK BOARD OF TRADE AND TRANSPORTATION	83
NEW YORK CENTRAL AND HUDSON RIVER R. R. Co	83, 88, 90
NEW YORK CENTRAL R. R.	46, 48
NEW YORK, CHICAGO AND ST. LOUIS R. R. Co	83, 88
NEW YORK, LAKE ERIE AND WESTERN R. R. Co	83, 90, 247
NEW YORK, NEW HAVEN AND HARTFORD R. R. Co	86, 91
NEW YORK, N. Y.	15, 24, 28, 29, 40, 46, 47, 49, 57, 60, 63, 88, 93, 247, 274, 278, 283, 286, 312, 323, 333, 341
NEW YORK, PENNSYLVANIA AND OHIO R. R. Co	83
NEW YORK AND NORFOLK R. R. Co	87
NORFOLK, VA	87
NORTH CAROLINA	6
NORTH DAKOTA	323
NORTH EASTERN R. R. Co. OF SOUTH CAROLINA	91
NORTHERN PACIFIC R. R.	261
NORTHERN PACIFIC R. R. Co	10, 83, 91, 281, 342
NORTON, COMMISSIONER	343
NOTICE	
time and place of taking testimony	151
OCEAN STEAMSHIP COMPANY OF SAVANNAH	92
OFFICIAL CLASSIFICATION	24, 32, 64, 250
adoption by trunk lines	23
OFFICIALS	
railway, where action of, has been unsatisfactory	11
OFFICIAL UNIFORM BILL OF LADING	65
OHIO	7, 8, 295, 323, 343
OIL	
car-load, rates of carriers for	37
charges on, shipped in barrels upon carriers' cars	37
charges on, shipped in shipper's tank car	37
decision of Commission on question of relative rates of	38
disadvantage to shipper of, in barrels	38
relative transportation charges on	37
OMAHA, NEBR	269, 281
OPERATION	
management and, of railways	34
OPERATING EXPENSES (see Reasonable rates)	151
OPINION	
by Chief Justice Marshall	20
ORANGES	92
ORDER	
enforcement of	152
of reparation	152
to show cause	152
vacated after hearing	152
ORDERS	
Commission not invested with power to enforce	14, 18
modification or reversal of previous, of Commission	23
recommendations of Commission relative to enforcement of its	22
ORGANIZATIONS	
commercial	65
of railroad employes	337
OVERCHARGE	
made through misapprehension of passenger	152
on books	152
PACIFIC STATES	28
PACKING-HOUSE PRODUCT	152

	Page.
PARTIES	86
absence of necessary	153
absence of party interested	153
all interested entitled to be heard	152
carriers concerned in matters complained of should be made parties	
defendant; classification complaint; complaint formal and informal	152
complaint under fourth section	152
interested	154
personal interest	152
persons interested need not be made formal	153
taking of depositions by either under act to regulate commerce as	
amended (<i>see</i> Practice; Complaint)	154
voluntary association	152
when absent parties will be cited in after decisions	154
when initial carrier may be made sole defendant	152
when necessary parties will be brought in	153
who are necessary	153
PARTY RATES	
illegal	155
PASSENGER	
average carried 1 mile per mile of line	7
average cost of carrying one 1 mile	7
average journey per	7
average receipts per, per mile	7
cars in use	5
locomotives in use	5
mileage	7
number of carriers 1 mile per passenger engine	5
PASSENGER CARS	
heating of	340
PASSENGER RATE SHEETS	265, 268
PASSENGERS	
colored people	155
discrimination in sale of tickets	155
immigrants	155
killed and injured	8
number of, carried by railways	7
payment of additional train rates by	155
refunding of excess charges to	155
rights of carriers to select cars for transportation of	155
when rates for parties are unlawful	155
white and colored	302, 307
PATENT MEDICINES	154
PEACHES	86, 87, 91, 154
rate on	50
reasonable rates	87
PENALTIES:	
criminal	15
imposition of criminal, upon railway officials	16
PENDING PROCEEDINGS	155
PENNSYLVANIA	15, 288, 323
PENNSYLVANIA SYSTEM	342
PENNSYLVANIA R. R. CO.	83, 87, 90, 91, 92
PEORIA, ILL.	244, 245
PERISHABLE FREIGHT:	
special train service	156
transportation charges	156
PERISHABLE FRUIT	86, 87, 91
PERKINS, R. C.	269
PERSONS EMPLOYED	69
PERTH AMBOY, N. J.	284, 287
PETERSBURG R. R. CO.	92
PETITION (<i>see</i> Complaint; Parties; Practice)	156
PETITIONS	
to United States circuit court	15

	Page.
PETITIONS FILED IN UNITED STATES CIRCUIT COURTS	271
against Atchison, Topeka and Santa Fe R. R. Co. <i>et al</i>	273
Lehigh Valley R. R. Co	282
Cincinnati, New Orleans and Texas Pacific Rwy. Co. <i>et al</i>	289
Georgia R. R. Co	289, 302
Detroit, Grand Haven and Milwaukee Rwy. Co	309
PETROLEUM AND ITS PRODUCTS	156
PHILADELPHIA AND READING R. R.	342
PHILADELPHIA AND READING R. R. Co	83
PHILADELPHIA, PA	87, 282, 286, 289, 303, 304
PHILADELPHIA, WILMINGTON AND BALTIMORE R. R. Co	87, 92
PHINIZY, C. H.	302, 303
PINGREE, SAMUEL E	334
PITTSBURG, CINCINNATI AND ST. LOUIS Rwy. Co	83, 91
PLATTSMOUTH, NEBR	269
POOLING	17
within the meaning of the act	18
PORTLAND, OREGON	11, 281
PORT OF ENTRY	83
in adjacent foreign country	156
in United States	156
POSTING PASSENGER-RATE SHEETS	265
POSTING OF RATES	268
PRACTICE	
abandonment of proceeding	156
abandonment of tariff	159
absence of necessary parties	161
amended rules and forms	159
amendment of complaint after demurrer	161
amendment when not necessary	157
application for rehearing	158
attendance of witnesses	161
case retained for a further showing	157
cases at issue	156
cases involving classification and rates	160
cases retained for further evidence	161
collateral inquiry	157
complaint to, and adjudication by, Commission	156
complaint, when sufficient	159
complaint, when sufficient under fourth section	160
concession of rates before decision terminates the controversy	159
concession of relief	161
contracts prior to passage of act	
decision	158
decision and report	158
evidence required	156
interested parties entitled to be heard	161
notice of hearing; testimony; regularity of proceeding	160
order changing rates not retroactive	157
order of reparation	161
order to show cause after decision to interested carriers not parties	161
petition for rehearing	161
place of hearing	158
production of documentary evidence under act to regulate commerce	
as amended	161
public hearings	157
questions of law	156
rehearing	83, 158, 161
reparation in pending proceedings	159
replication	159
separate proceedings	157
subpœnas <i>duces tecum</i>	161
subpœnas for production of books, papers, and documents	159
theory	157
when carriers not parties will be cited in	86
when complainant, a State railroad commission, has ceased to exist	92, 162
when necessary parties will be brought in	160

	Page.
PREFERENCE OR ADVANTAGE	
anthracite and bituminous coal	170
between carriers by water	169
between localities	165
between localities located on different divisions of consolidated line	170
by payment of rebates through excessive car mileage and yardage charges	171
carload and less than carload quantities	167
colored people	162
competitive commodities; localities	170
considerations which affect the question	163
corn and corn products	170
difference in through rates	166
disparity in rates	164
dried fruit and raisins	165
excursion cars	168
food products	172
foreign and domestic traffic	172
free transportation of persons	166
group rates	170
group rates on coal	163
in shipment of coal	163
in shipments of corn	166
in use of live-stock cars	88
malevolence	166
measure of proof required to justify	162
obligations of State carriers	168
patent medicines	169
petitions to enforce order reducing rates	289, 302
answers to such petitions	293, 294, 295, 307
prejudice and disadvantage to shippers of corn products	167
pig iron; localities	170
proof of damage necessary	165
railroad material	163
receipt and delivery of traffic at local stations	167
relative rates	166
same rate for shorter and longer distances	90, 93, 171
soaps	169
steamboat lines; through billing and through rates	170
surgical chairs	170
tank and barrel shipments of petroleum and its products	168
tank, cars, and barrels	164
through and local rates	168
transportation of cotton in flat and box cars	168
transportation of mineral water	166
transportation of petroleum oils	164
undue, and advantages	17
unreasonably low rates	165
what constitutes unlawful	165
what does not affect the question	163
what is undue	18
wheat and wheat flour	169
when undue and unreasonable	162
white and colored passengers	167
PREJUDICE AND DISADVANTAGE	17, 172
PRESUMPTION	
filing of schedules raises no presumption as to the legality of rates	172
PRIVATE CARS	39
PROCEEDING	
before Commission	172
instituted by mercantile society	172
in United States courts	172
reduction of rate during pendency	172

	Page.
PROCEEDINGS	
criminal	15
instituted against officers and agents	16
PROCTOR & GAMBLE	83
PRODUCERS	172
rights of	87
PROGRESS IN THE WORK OF REGULATION	11-14
PROOF (<i>See Evidence; Burden of Proof</i>)	173
sufficient to justify conviction	17
PROPERTY	
valuation of railway	6
PUBLICATION OF JOINT TARIFFS	245
PUBLICATION OF RATE SCHEDULES	239-270
PUBLIC INTEREST	87, 173
PUBLISHED RATES	17
devices to obtain less than	17
QUEEN AND CRESCENT ROUTE	269
RAILROAD. <i>See RAILWAYS.</i>	
RAILROAD AND WAREHOUSE COMMISSION OF ILLINOIS	31
RAILROAD COMMISSIONERS	
convention of	65, 321, 337
RAILROAD COMMISSION OF FLORIDA	91
RAILROAD EMPLOYÉS	
accidents to, ...	337
demands of, for uniform coupler	339
reported as killed and injured	8
RAILROAD PROBLEM	66
RAILROAD REGULATION	
in foreign countries	173
in the States	173
RAILWAY ASSOCIATIONS	247, 255
RAILWAY COMPANIES	
accounts of, when also miners and shippers of coal	137
consolidated	5
exclusive carriers over their own road	38
failure to make rates known	14
failure to publish and post tariffs	17
financial obligations	173
first charter	35
how far responsible for acts and representations of shipping agents	57
leased to other companies	5
liable for value of false bill of lading	57
merged their corporate existence by	5
number of	4
owner of capital stock of coal companies	173
solvency	173
RAILWAY LEGISLATION	66
RAILWAY MILEAGE	
increase in	4
of the United States, year ending June 30, 1890	4
RAILWAY OFFICIALS	12
imposition of criminal penalties upon	16
where action has been unsatisfactory	4
RAILWAY REVIEW	342
RAILWAYS	
accidents on	8
capitalization of	6
capital per mile of line	6
character of, when considered	174
classification of, according to gross revenue	5
consolidation of	173
consolidation of competing	174
functions of owners of	34
Government aided, and telegraph lines	9
grant of trackage rights for through business	174
in foreign countries	173
leased to other companies	5

	Pag
RAILWAYS—Continued.	
magnitude of transportation of	11
management and operation of	34
monthly income and expenditures	3
number of passengers carried by	7
not a common highway	174
operation of	3
regulations, knowledge necessary to proper	11
route and development of traffic	36
the right of public regulation	49
tons of freight carried by	7
total amount of stock issued on	6
total number of men employed on	6
uniform bill of lading	315
valuation of property of	6
RAILWAY STATISTICS	3-9
RATE	
on peaches	50
RATE MAKING	
combination rates not shown on tariffs	174
RATES	
additional train	17
all, between same points should be shown on same schedule	176
announced without compliance with statute	250
blanket	11
carload, for oil	177
cattle and dressed beef	37
changes in	178
classification, but a general method of establishing	244, 248, 256, 259, 260, 267
coal	26, 27
combination	177
combinations, when unlawful	174, 177, 263, 266, 267
commission to establish through, in public interest	176
commodity	49
commodity, described and discussed	249, 250, 251
complaints based on alleged unreasonableness of	84
consideration of reasonableness of	18
cotton	18
devices to obtain less than published	178
divisions of through	17
disparity in	91
dressed beef and hogs	174
effect of State, on interstate rates	88
establishing and changing, and charges	176
export	11
failure to give proper notice of changes in	175
filed without authority	252
food products	11
group	177
hog and hog products	85, 174, 178
how demoralized by water competition	177
import traffic	176
information concerning	83, 178
joint	174
live cattle	14, 41, 93, 263, 268
live hogs	88
local and through, considered	88
maximum	175
milling, in transit	243
must be equal and open	175
must be shown on published tariffs	175
notice of advances and reductions	176
on carload and less than carload shipments	92, 176
on cattle	175
on domestic and export shipments	40
on live cattle in carloads	175
on oil	175
	37

RATES—Continued.		Page.
oranges and lemons	.....	92
passenger	.....	175
passenger, excursion	.....	176
patent medicine	.....	177
peaches	.....	91, 178
perishable freight	.....	178
petroleum and its products	.....	177
pig iron	.....	177
publication of	.....	42
published	.....	17
question of fixing and apportioning the through	.....	44
rate wars and rate cutting	.....	178
reasonable	.....	66
reducing passenger, without publishing notice	.....	12
relative	.....	88
schedules of	.....	13
single	.....	175
soap	.....	177
special, prior to the act	.....	175
special, to and from World's Columbian Exposition	.....	66
straight	.....	177
soap	.....	83, 90
sugar	.....	93, 177, 269
surgical chairs	.....	177
the failure to make known	.....	14
through and local	.....	86, 90, 93, 176
through, by water and rail lines	.....	177
through, Commission to establish in public interest	.....	49
through, defined	.....	175
through, established by public authority	.....	43
through export, inland proportion of	.....	175
through, making of	.....	43
through routes and	.....	41
through, statutes concerning	.....	51, 52
to parties	.....	176
uniform	.....	65
unsteadiness in	.....	174
vehicles	.....	178
violation of act by charging less than published	.....	12
war of passenger	.....	13
wars of	.....	174
wheat and barley	.....	91
wheat and flour	.....	178
when changes are not justifiable	.....	175
when unlawful rebates are given by free cartage	.....	177
RATE SCHEDULES		
abbreviations	.....	253
all rates between same points should be shown on same schedule	.....	250
amendments to	.....	249, 250
authority for publication of, when joint	.....	245
construction, publication, and filing of	.....	239-270
delay in filing	.....	256
duty of initial road to file	.....	251
failure to file	.....	252
irregularities in construction of	.....	239-270
issued by fast freight lines	.....	246
limited to expire on certain date	.....	249
manner of changing and abrogating	.....	248
matter to be shown on title page	.....	242
name of State in which points are located should be shown	.....	253
nomenclature	.....	241
notes regarding application of rates	.....	242
numbering	.....	251, 252
points of connection should be shown	.....	247
passengers	.....	255
rules or regulations affecting rates should be shown	.....	247

	Page.
RATE SCHEDULES—Continued.	
should be systematically arranged	243
should be uniform	266
should contain classification	250
should show routes	246, 268
should state charges definitely	267
should state places between which rates apply	241
size of	253
State roads	256
stations should be shown in order of location	243
supplements to	249, 250
type to be used	241
unit of quantity should be shown	253
RATE-SHEETS (<i>see</i> Tariffs)	178
publication and filing of	11
RATES UNREASONABLY LOW	
commission will not prohibit	178
considered and discussed	178
RATE, THROUGH	
apportionment of	53
RATE WAR	
its attendant evils	13
RATIONS	
to railroad employé's	338
REASONABLE RATES	66
carload and less than carload quantities	186
carloads, more than one consignor or more than one consignee	186
carriers may be guided by manufacturer's description	188
carriers who are not parties	187
charge made by adding local rates	191
circumstances and conditions	183
coal	85
commercial considerations; rights of producers	192
Commission to determine	192
commutation tickets	186
comparison with exceptional rates of other portions of the line	181
comparison with rates of other carriers	181
considerations which affect the question	179, 190
contracts between the parties made prior to the act	192
cost of carriage, terminal, and ferry expenses	185
discussion of the subject	192
distance as a measure of railroad service	185
division of through rates	92
duty of Commission to enforce provisions of act concerning	190
errors in freight billing	187
evidence	179
food products	189
foreign and domestic traffic	192
former preferential rates not a fair test	184
group rates on milk	182
local and through business	184
live cattle in carloads	185
live hogs and hog products	188
must not be so low as to impose a burden on other traffic	189
not necessarily proportionate to distance	181, 191
on different branches	185
on long hauls	184
oranges and lemons	92
oranges and lemons; reparation	193
parties	183
patent medicines	188
peaches	86, 87, 91, 193
perishable freight; special train service and car equipment	192
petition filed in the United States circuit court to enforce order	282
answer of carrier	286
petroleum and its products	191
pig iron	191

	Page.
REASONABLE RATES—Continued.	
presumption	191
principles relating to	179
profitable rates may not be unjust	182
property billed through but reshipped at intermediate point	186
proportion of through rates	180
quantity	188
railroad competition	186
railroad material	181
rates at other points will be considered	185
rates long continued presumed profitable	190
relation to cost of production and value of service	190
removal of unjust discrimination by correction of unreasonable rates	192
responsibility of carriers owning through lines	180
schedules of rates on file	188
small earnings do not justify excessive	183
soap	189
subject considered	179
sugar	93
sugar, reparation	193
surgical chairs	191
to small town	188
to small and large town	180
transportation of emigrant's movables	187
value of the service to be considered	186
what should be considered in determining	182
wheat and barley	91, 193
when rates are prima facie just and reasonable	183
REBATES	
by payment of excessive car mileage	40
by payment of yardage charges	88
caused by free cartage	309
from rates on live cattle	194
on shipments of coal	194
paid from car mileage	194
to holders of commutation tickets	194
unlawfully caused by free cartage	194
RECEIPTS	
average for carrying 1 ton of freight	7
average per passenger per mile	7
traffic	8
REDONDO BEACH	279, 280, 281
REDONDO BEACH RY. CO.	277, 278, 279, 281
REESE, H. C.	269
REGULATION	
progress in the work of	11
right of public, of railways	49
REHEARING	
application for, by outside parties	194
former order vacated	194
petition	194
petition for	194
REHEARINGS	83, 91
RELATIVE RATES	
adjustment of	194
between localities	196
circumstances affecting	195
coal and other low-grade freight—coal and general freight	200
competitive articles—hogs and hog product	199
corn and corn products	200
duty concerning	196
food products	199
for long and short hauls over different lines	197
in neighboring territory	197
manufacturers' description	198
on carload and less than carload quantities	197
on competing lines	197

	Page
RELATIVE RATES—Continued.	
on competitive articles should be adjusted with reference to cost of service, hogs and hog product	199
on compressed and uncompressed cotton	198
on different branches	197
on different divisions of the same carrier	198
on strictly competitive articles	88
perishable and ordinary freight	200
pig iron from different mills	199
proof required	196
to competitive and local points	198
under section 1 of the act	194
wheat and flour, localities	200
REPARATION	92, 93
awarded by Commission	200
difference between through and local rates	201
for damages	10
in pending proceedings	201
removal of question to the courts	201
when made no order will issue	87, 201
REPLICATION	
not necessary to be filed	201
not required	201
REPORT OF CONFERENCE OF RAILWAY REPRESENTATIVES	
to merge official and Western classifications	24
REPORT OF INTERSTATE COMMERCE COMMISSION	3
appendices to (<i>see</i> Appendices).	
REPORTS AND OPINIONS OF COMMISSION	
during the year	81
since organization, important points decided in	81
REPRESENTATION	
false	17
REPUBLIC OF MEXICO	26
RESHIPMENT OF FREIGHTS	
after transportation to point of sale	201
under through bills	201
RESOLUTION	
adopted by Indianapolis Board of Trade in relation to uniform classification	32
introduced in House relative to uniform classification	27
RETROACTIVE NOTICE	269
RETURN LOADS	
for empty cars	201
REVENUE	
per train mile on passenger trains	7
REYNOLDS, R. F.	269
RHODE ISLAND	323, 341
statutes of, relating to heating of passenger cars	344
RICHMOND AND PETERSBURG R. R. CO	92
RICHMOND, FREDERICKSBURG AND POTOMAC R. R. CO	92
RIGHTS OF WAY	
to provide live-stock cars	202
RITZVILLE, WASH	91
RIVER TRAFFIC	
should be under control of Commission	9
ROBERTS, D. C.	269
ROGERS, WILLIAM E	333
ROLLING STOCK	
furnished by corporations and companies	9
ROUTES	
should be shown on tariffs	246, 268
through, and rates	41
through, establishment of	43
through, formed by public authority	45
through, statutes concerning	51, 52
through, voluntarily formed by connecting carriers	45

	Page.
ROUTING OF FREIGHT	
rights of shippers and duties of carriers in regard to.....	202
RULES OF PRACTICE.....	364
I. Public sessions.....	364
II. Parties.....	364
III. Complaints.....	365
IV. Answers.....	365
V. Notice in nature of demurrer.....	365
VI. Service of papers.....	366
VII. Affidavits.....	366
VIII. Amendments.....	366
IX. Adjournments and extensions of time.....	366
X. Stipulations.....	366
XI. Hearings.....	366
XII. Depositions.....	366
XIII. Witnesses and subpoenas.....	367
Fees of witnesses.....	367
XIV. Proposed findings.....	368
XV. Rehearings.....	368
XVI. Printing of pleadings.....	368
XVII. Copies.....	368
XVIII. Address of the Commission.....	368
RULES OR REGULATIONS AFFECTING RATES.....	247
RYAN, R. X.....	269
SAFETY APPLIANCES.....	66
advisability of Federal regulation of.....	337
bills introduced relative to.....	337
uniformity in.....	337
SALAMANCA, N. Y.....	247
SALTED HIDES AND PELTS.....	202
SAN BERNARDINO.....	15, 274, 276, 278, 280
SAN BERNARDINO BOARD OF TRADE.....	273, 274, 275, 276, 278-279, 280, 281
SAN DIEGO.....	281
SAN FRANCISCO, CAL.....	11, 280, 281
SAN FRANCISCO CHAMBER OF COMMERCE.....	83
SAN PEDRO.....	280, 281
SAULT ST. MARIE.....	246
SAVANNAH, FLORIDA AND WESTERN RY. Co.....	91
SCALPER	
tickets sold to in Minneapolis.....	12
SCHEDULES (<i>see</i> Tariffs).....	202
SCHOONMAKER, AUGUSTUS.....	2, 333
address on discrimination for use of private cars.....	333
SCHOONMAKER, JUDGE.....	333
SCHRIEVER, J. G.....	269
SEABOARD AND ROANOKE R. R. Co.....	92
SECTION 1	
section 7 considered in construing.....	86
SECTION 7	
considered in construing section 1.....	86
SESSIONS	
special and inquiries.....	10
SEVENTH SECTION	
considered in construction of first section.....	202
SHAMBERG, JACOB.....	88
SHIPPER	
both, and carrier criminally liable.....	17
compensation allowed, by carriers for use of cars.....	36
compulsion under which, rests to accept bill of lading.....	59
SHIPPERS	
compensation for the use of cars.....	39
disadvantage to, of oil in barrels.....	38
may introduce parole evidence to show he is not bound by conditions of bills of lading.....	60
questions arising between, and carriers.....	18
rebates by free cartage of freights.....	202
rebates to, on traffic destined to adjacent foreign country.....	202

	Page.
SHIPPERS—Continued.	
representations of	202
responsibilities and duties of carrier towards	43
rights of	202
rights of, in the routing and waybilling of freight	202
tank cars furnished by	37
use of cars	34
SHORTER, HENRY R.	334
SHORT-HAUL CLAUSE	17
SHREVEPORT, LA.	244, 245
SIOUX CITY AND PACIFIC RY. CO.	9
SIXTH SECTION	254
discussed	239, 270
(See Rebates; Free cartage)	
SMITH, ORLAND	83
SMITH, SPENCER	333
SOAP	83
classification	203
SOCIAL CIRCLE, GA.	15, 290, 292, 294, 295, 296, 297, 298, 299, 300, 301
SOUTH CAROLINA	6, 323
SOUTH DAKOTA	323
SOUTHERN CALIFORNIA RY. CO.	273, 274, 275, 276, 277, 278, 279, 281
SOUTHERN COLORADO	7
SOUTHERN INTERSTATE ASSOCIATION	30, 261, 262
SOUTHERN MISSOURI	7
SOUTHERN PACIFIC CO.	83, 269, 342
SOUTHERN PACIFIC R. R. CO.	281
SOUTHERN RAILWAY AND STEAMSHIP ASSOCIATION	24, 27, 30
SOUTHERN RAILWAY AND STEAMSHIP ASSOCIATION CLASSIFICATION	32
SOUTHERN STATES	28
SPAULDING, J. T.	293
SPECIAL AGENTS	
local examinations by	11
SPECIAL RATES	203
to and from the World's Columbian Exposition	66-68
SPECIAL SESSIONS AND INQUIRIES	10, 11
SPECIAL TRAIN SERVICE	203
SPIKER, W. J.	314
SPOKANE FALLS, WASH.	10
STATE CONSTITUTIONS	51
STATE COURTS	
holdings of, in relation to conditions of bills of lading	60
STATE RAILROAD COMMISSIONS	
abolished, effect on cases when it is complainant	92
action respecting cattle in carloads	203
complaints before Interstate Commerce Commission	203
STATE RAILROAD COMMISSIONERS	341
(See Convention of railroad commissioners)	321
STATE RAILROAD COMPANY	
subject to the act	92
STATE RAILROADS	
as part of a through route	203
when subject to the act to regulate commerce	203
STATE	
traffic originating in one destined to another	47
STATISTICAL DIVISION	
exhibits of	3
suggestions by, to Commission	9
STATISTICS	
classified into ten groups	4
collection and preparation of	11
of accidents	8
of accidents to railroad employes	8
railway	3
STATUTES	
English	53
State	51, 52

	Page.
STATUTES OF VARIOUS STATES RELATING TO HEATING OF PASSENGER CARS BY STEAM	
Connecticut, New York, Massachusetts, New Hampshire, Rhode Island, Michigan, Maine, Vermont, Maryland	343
STEAMBOAT LINES (<i>see</i> Through routes and Through rates)	204
ST. JOSEPH, MO.	269
ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RY. CO.	83
ST. LOUIS AND SAN FRANCISCO RY.	264, 265
ST. LOUIS AND SAN FRANCISCO RY. CO.	273, 274, 275, 276, 277
ST. LOUIS	11, 14, 24, 26, 244, 249, 274, 278
STOCK	
dividends on	6, 7
total amount of, issued on railways	6
STOCKTON, PA.	284
STONE & CARTEN	309, 310
STOVES, CAR (<i>see</i> Heating passenger cars)	341
STONE, MARY O.	309, 314
ST. PAUL, MINN.	10, 12, 25, 91, 246
SUBPENA DUCES TECUM (<i>see</i> Practice)	204
SUGAR	269, 270
SUITS	
now pending	15
SUPREME COURT OF UNITED STATES	
doctrine of	59
SURGICAL CHAIRS	
transportation	204
SWITZERLAND	
steam heating of passenger cars in	343
TANK CAR	
charges on oil shipped in shippers'	37
furnished by shippers	37
(<i>See</i> Cars; Unjust discrimination)	204
TANK STATIONS	204
TARIFFS	
abandonment of	206
circular concerning filing joint tariffs	204
circular relating to changes in joint tariffs	205
consideration of, as evidence after filing	207
export	206
failure to publish and post	17
filing and the publication of	204
foreign carriers	205
form of	206
import	206
in force for considerable periods	206
joint	93, 207
joint on import traffic	84
modification of, by carriers	204
notice of advance in rates	92
order for publication of joint export tariffs	204
passenger	206
posting of	87
preparation of	204
production of, at investigations	206
publication of rates on import traffic	84
published and filed with Commission	13
rates to every point on a line should be shown on	206
rebates from, by excessive car mileage	88
payment of yardage charges	88
(<i>See</i> Distance tariffs; Joint tariffs; Rate schedules.)	
special	204
special emigrant, when unlawful	206
straight rates to destination should be shown on	206
through export	206
to be framed by carriers	204
unlawful rebates from, caused by free cartage	206
unlawful rebates from rates shown on	207

TAYLOR, JOHN G.....	Page. 263
TELEGRAPHIC NOTICE OF CHANGES IN RATES.....	259
TELEGRAPHIC LINES.....	
government-aided railroad and.....	9
TENNESSEE.....	4, 290, 293
increase in operated mileage.....	4
TERMINAL CHARGES.....	207
TERMINAL EXPENSES.....	207
TERMINAL STATIONS.....	
posting of tariffs in.....	207
TESTIMONY (<i>see</i> Evidence).....	207
TEXAS.....	7, 8, 26
TEXAS AND PACIFIC RY.....	269, 270
TEXAS PACIFIC RY. CO.....	83, 93
TEXAS COMMON POINTS.....	244, 245
THE ACT TO REGULATE COMMERCE AS AMENDED. FULL TEXT.....	349
THE DANIEL BALL.....	47
THE RAILROAD AND WAREHOUSE COMMISSION OF ILLINOIS.....	31
THIRD PARTIES.....	207
THIRD PARTY.....	
innocent.....	56
THIRD SECTION.....	
carriers referred to.....	208
(<i>See</i> Preference or advantage; Through routes and through rates.)	
THIRTEENTH SECTION (<i>see</i> Complaint; complainant: Interstate Commerce Commission).....	208
THOMAS, J. W.....	293
THROUGH AND LOCAL RATES.....	
addition of through rate to competitive point and local rate to destination.....	
charge based on through rate added to local rate back to destination.....	208
petroleum and its products.....	208
property reshipped at intermediate point.....	208
through rates may be proportionately lower than local rates.....	208
water and rail lines.....	208
THROUGH BILLING.....	42
THROUGH BILLS OF LADING.....	209
THROUGH RATE.....	
apportionment of.....	53
THROUGH RATES.....	267
by water and rail lines.....	209
Commission to establish, in public interest.....	49
divisions.....	91, 92
established by public authority.....	43
from grouped stations.....	209
making of.....	43
question of fixing and apportioning the.....	44
rate per ton per mile.....	209
statutes concerning.....	51, 52
through and continuous lines imply.....	209
what are.....	209
when not illegal.....	209
when required.....	209
THROUGH ROUTES:	
Commission to establish, in public interest.....	49
establishment of.....	35, 43
formed by public authority.....	45
provisions concerning, in State statutes.....	51-52
where, are voluntarily formed by connecting carriers.....	45
THROUGH ROUTES AND THROUGH RATES.....	41-54
discrimination between connecting lines.....	89, 211
interest in competing line.....	89, 212
terminal delivery by agent.....	89
rail and water lines; carriers not subject to the act; reparation; dismissal of complaint.....	210
subject discussed.....	211

	Page.
THROUGH ROUTES AND THROUGH RATES—Continued.	
terminal delivery by an agent	212
the act does not provide for ordering	210.
through carriage over connecting lines	211
to competitive points	210
THROUGH SHIPMENTS	
property reshipped at intermediate station	212
THROUGH TRANSPORTATION	85
TICKET BROKERAGE	
subject discussed	212
TICKETS	
commission on the sale of	212
commutation	213
price of unlimited compared with special limited	12
date of expiration	213
excursion	213
holdings of court on question of unlimited	13
limited as to time	13
mileage	213
mileage, excursion, and commutation	212
overcharge on	212
party rate	213
sale of, by ticket brokers	213
sale of, by ticket brokers, legislation concerning, recommended	213
sold to scalper in Minneapolis	12
special limited differ from unlimited	13
stop-over privileges on	13
through	213
TOLEDO, OHIO	312
TOLLS	36
turnpike theory of	35
TOMHICKEN, PA	284, 287
TOPEKA, KANS	11, 274
TRACK	
total length of	4
TRADE AND TRAVEL	
new facilities for	34
TRADE CONDITIONS	213
TRAFFIC ASSOCIATIONS	93
call issued by the leading	28
TRAFFIC	
bulk, weight, value, and character	214
carriage must yield some profit to the carrier	214
Central, Association	30
coal	85, 216
competitive	215
corn and corn products	215
coast and river	9
cotton	216
destined to point in adjacent foreign country	213
dressed beef	216
dressed beef and hogs	88
dressed hogs	215
export	87, 214, 216
facilities of	215
flour	215
food products	215
foreign and domestic	216
freight	7
general	86, 89, 216
growth and development of railway	36
import	83, 213, 216
interchange of	214, 215
interstate	42
"like kind" defined	84

TRAFFIC—Continued.	
like kind of traffic	216
like, over divisions of consolidated line	215
live cattle	88, 216
live hogs	88, 215
live-stock	88
low grade	216
of express companies	9
oranges and lemons	92, 216
originating in one State destined to another	47
packing-house product	215
patent medicines, ale, beer, and mineral water, volume	214
peaches	86, 87, 91, 216
perishable freight	216
petroleum and its products	215
pig-iron	215
receipt and delivery of	214
receipts	8
regulations of railway in England	53
river, should be under control of Commission	9
salted hides and pelts	215
soap	83, 90, 214
State and interstate	214
sugar	93, 214
surgical chairs	215
wheat and barley	91
wheat and flour	216
vehicles	216
TRAINMEN	9
death of railroad	338
TRAIN BRAKES	5
TRAIN RATES	216
TRANS-MISSOURI ASSOCIATION	30
TRANSPORTATION	217
magnitude of railway	11
on the Great Lakes	9
TRANSPORTATION COMMITTEE	67
TRIAL	
constitutional guaranty of jury	23
TRUNK LINES	
adoption of official classification by	23
TRUNK LINE ASSOCIATION	67
TRUNK LINE	
Mississippi Valley Railroad Association	30
TURNER, G. H.	370
TURNPIKE	
theory of tolls	35
TWELFTH SECTION	
amendment of	217
UNDERBILLING	
character of transaction	217
extent of	217
remedies for	217
violation of law	217
UNDUE PREFERENCE AND ADVANTAGE	17
UNDUE PREFERENCE	
less frequent	11
(See Preference and advantage)	217
what is	18
UNDUE PREJUDICE AND DISADVANTAGE	17
UNIFICATION OF CLASSIFICATION	
of general benefit to the country	34
UNIFORM BILL OF LADING	62, 315
not generally adopted by carriers	64
official	65

	Page.
UNIFORM CLASSIFICATION	23-34, 65, 217
benefits to be derived by carriers from	28
call for conference upon	28
Commission recommends the passage of an act requiring the adoption of a	33
conclusions of Commission on	27
coöperation of the Commission asked, in the direction of	32
no longer considered impracticable	33
position of Commission with regard to	31
proceedings of committee on	29
progress in direction of, by carriers	23
proposed new	32
standing committee on	28
UNIFORMITY IN SAFETY APPLIANCES	337
UNIFORMITY OF RAILWAY ACCOUNTS	66
UNIFORM RATES	65
UNION PACIFIC RY. Co.	83, 90, 281
UNITED STATES CIRCUIT COURTS	
cases brought to enforce orders of the Commission	271
judicial districts in which proceedings to enforce orders have been instituted :	
California, southern district	273
Georgia, northern district	289, 302
Michigan, western district	309
Pennsylvania, eastern district	282
UNITED STATES COURTS	
enforcement of orders of Commission in	217
UNITED STATES SENATE	
resolution directing investigation of alleged unreasonableness of rates on food products	217
UNJUST AND UNREASONABLE CHARGES	17
UNJUST AND UNREASONABLE	
what charges are	18
UNJUST DISCRIMINATION	
affecting Boston rates	220
basing and local points, carriers not parties to the proceeding	233
between connecting lines	43, 50, 89
between corn and corn products	226
between localities	220, 229
between small and large towns	222
by payment of excessive car mileage	88
yardage charges	88
by special tariffs	223
by special tariffs on emigrants' movables	225
car-load and less than car-load quantities	227
car mileage	226
carriers by water	228
carrier who is also a miner and shipper of coal, separate transporta- tion accounts	232
charges on live cattle shipped in private stock cars	233
classification used as a device	233
coal rates	228
combination rates	222
commutation ticket holders	227
corn and corn products	231
date of transaction	218
defective tariffs and different classifications	226
discount for quantity	217
discrimination between shippers over different divisions of consoli- dated lines	231
distribution of cars	219
estoppel	218
evidence	222
foreign and domestic merchandise, import traffic	232
free cartage of freight	225
free transportation	223

UNJUST DISCRIMINATION—Continued.

furnishing cars—mileage on live-stock cars	231
furnishing cars—mileage on tank cars	231
in classification of soaps	90
inland rates on export traffic	324
in rates on coal to points in Canada	225
joint water and rail lines	224
less frequent	11
local and through rates	223
local and through traffic	227
mileage	218
mileage, excursion, and commutation tickets	226
mileage tickets	218
milk transportation	223
obligations of State carriers	224
party and passenger carload rate	224
passenger classes	223
passenger rates	227
passenger transportation	218
patent medicines	230
rates on branch lines	224
rate on live hogs and hog product	228
rebates to consignees of live stock—yardage charges	233
relative rates	219
removal of by correction of unreasonable rates	232
same rate for shorter and longer distances	93
separate accounts of coal transportation by carrier who is also a miner and shipper of coal	228
short branch roads	222
soap	230
steamboat lines—through billing and through rates	231
stock yards	218
tank and barrel rates on petroleum and its products	220
ticket brokers	223
transportation in cars belonging to the shipper	223
transportation in cars of other companies	222
two terminal stations at one end of road	218
water competition	219
what is	17, 18
wheat and wheat flour	228
white and colored passengers	226
UNREASONABLENESS OF RATES	18
USE OF SHIPPERS' CARS	34-41
UTAH	26
VALUATION	
of railway property	6
value (<i>see</i> Traffic)	233
vehicles (<i>see</i> Buggies)	90
VERMONT	323, 334, 341
statutes of, relating to heating of passenger cars	344
VICKSBURG, MISS.	244, 245
VIOLATION	
criminal of the act	18
VIRGINIA	6, 323
VOLUME OF TRAFFIC	233
WABASH R. R. Co.	83, 90
WADLEY, WILLIAM	296
WAITE, CHIEF JUSTICE	48
WALKER, ALDACE F.	269
WAR OF PASSENGER RATES	13
WASHINGTON	11, 29, 66, 361, 364, 365, 368, 370, 371, 372
WASHINGTON, D. C.	279, 280, 290, 291, 303, 305, 310, 334
WASHINGTON, GA.	298
WATER AND PIPE LINES	233
WATER AND RAIL LINES	
competition by	233
joint arrangements	233





UNIVERSITY OF ILLINOIS-URBANA



3 0112 084228896